

## Guarantee and indemnity (referat form)

This precedent has been authored for LexisNexis

This precedent is part of a LexisNexis suite of form

This precedent is current to **April 2017**.

### Introductory note

This precedent sets out examples of the terms guarantee which is tied to obligation incurred by is important to customise precedents to take in provided and the unique requirements of the p

### What is a contract of guarantee?

A contract of guarantee is subject to any qualific collateral contract to answer for the debt, defau contemplated to be, or to become, liable to the

### What is an all moneys guarantee?

The purpose of an “all moneys” clause in a gua owing by the principal debtor however they are are *strictissimi juris* (defined in terms of the stri agreement strictly without any latitude given) th moneys” clause to ensure that it contains suffic found to be both equitable and comply with cre

### What is an indemnity?

An indemnity is a promise by one party to take incurred by another party usually as a result of party. For example, many building contracts be builder contain clause where the builder indem against the Owner for damage or injury caused

In Australia, there is a statutory requirement in guarantee to be enforceable it should be reduc Laws of Australia — 220 — Guarantees and In

There are provisions in this precedent that do r Protection Act 2009 (Cth) and the Competition

LexisNexis Sample

## Guarantee and indemnity (referable to an a

*[Drafting note: if the Guarantor is a natural person, the Guarantor to provide a solicitor's certificate of independent advice from a solicitor about the obligations of the Guarantor, a separate solicitor's certificate]*

This agreement is made on [date]

between

[name of guarantor] [ACN/ABN (if a company)] of

and

[name of beneficiary] [ACN/ABN (if a company)] (B

### BACKGROUND

- A. At the request of the Guarantor, the Beneficiary
- B. The Guarantor acknowledges that the Beneficiary is entitled to the Guarantee.
- C. *[Optional (if the guarantor is a company): This clause is intended to provide a commercial benefit for example in the case of a deed, as no consideration will therefore be binding.]*

### OPERATIVE PROVISIONS

## 1 Definitions and interpretation

### 1.1 Definitions

The following definitions apply in this document.

**Agreement** means *[insert details of the relevant agreement]*

**Debtor** means *[insert name and, if appropriate, details of the debtor]*

**Guaranteed Money** means all amounts (including interest) payable, or that otherwise remain unpaid by the Debtor, at any time under or in connection with the Agreement, whether present or future, actual or contingent, in full or in part, severally and without regard to the capacity of the Debtor to pay.

**Guaranteed Obligations** means the obligations of the Debtor, together with all its other obligations to the Beneficiary (including contingent obligations) arising under or in connection with the Agreement.