

BetaBoard – Account Application

Please complete and send to accounts@betaboard.com.au

How did you hear about us? Web search Social Media Sales Rep: _____

This application will only be considered if all items are completed or marked 'Not Applicable'.

Customer's Details *Enter the details of your business*

Business Type:		<input type="checkbox"/> Company	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust
Customer Legal Name:					
Business Name:					
Trust Name (if any):					
ACN (if any):			ABN:		
Business Address:					
Postal Address:					
Phone No.:			Fax:		
Email Address:					
Years in Business:			Nature of Business:		
Revenue for last financial year			Expected revenue for this financial year		
Contracting/Building Licence No.:					
Details of Accountant:			Phone No.:		
Name of Bank:					
BSB:			Account No.:		

Details of Requested Credit & Accounts Information

Enter the details of the credit you are requesting and your accounts staff

Credit Requested:	\$	per month
Accounts Department Details		
Name:	Phone:	Email:
Name:	Phone:	Email:
Name:	Phone:	Email:

ROCKLEA

58 Reginald Street
Rocklea QLD 4106
Ph: (07) 3375 3222

LOGANHOLME

1/9 - 13 Riverland Drive
Loganholme QLD 4126
Ph: (07) 3063 9556

NORTH LAKES

22 Torres Crescent
North Lakes QLD 4509
Ph: (07) 2111 5129

BRENDALE

1/266 Leitchs Road
Brendale QLD 4500
Ph: (07) 3205 7111

ORMEAU

40 Blanck Street
Ormeau QLD 4208
Ph: (07) 5620 1052

STEEL SHED

1717 Ipswich Road
Rocklea QLD 4106
Ph: (07) 3063 7689



betaboard.com.au



orders@betaboard.com.au



Rocklea

Trade References

Enter the details of your trade references (which must include two major suppliers) for us to contact

Name	Phone	Email	Years Supplying

Officer and Principal Details

Enter the details of the officers and principals of your business (e.g. directors, partners) and have each person sign, noting these persons are required to guarantee the Customer's obligations in accordance with the attached short-form guarantee.

**Officer/
Principal**

Name: _____

Residential Address: _____

Email: _____

DOB: _____ **Phone:** _____

Driver's Licence Details.:

Licence No.: _____ **Date:** _____ **State:** _____

Signature: _____

**Officer/
Principal**

Name: _____

Residential Address: _____

Email: _____

DOB: _____ **Phone:** _____

Driver's Licence Details.:

Licence No.: _____ **Date:** _____ **State:** _____

Signature: _____

**Officer/
Principal**

Name: _____

Residential Address: _____

Email: _____

DOB: _____ **Phone:** _____

Driver's Licence Details.:

Licence No.: _____ **Date:** _____ **State:** _____

Signature: _____

Account Application

Acknowledgement and execution

If the Customer is a company (including as trustee of a trust), this document must be signed by two directors or a director and secretary of the company. If the Customer is a partnership, at least two partners must sign.

By providing BetaBoard with this Account Application, the Customer named above and any person who signs this Account Application on behalf of the Customer (including any principals and officers listed above) agrees, declares and acknowledges that:

- (a) capitalised expressions used in this Account Application have the meanings given to them in BetaBoard's Standard Terms in place from time to time, which are currently available at www.betaboard.com.au or otherwise on request;
- (b) this Account Application is a material part of the Agreement (as defined in the Standard Terms) and the Customer and each officer and principal named in this Account Application (each a **Principal**) has read, understood and agreed to be bound by the Standard Terms in respect of all supplies of Products by BetaBoard to the Customer from time to time;
- (c) any requested credit terms in this Account Application are not binding on BetaBoard and BetaBoard will have the discretion to offer the Customer credit terms from time to time in accordance with the Standard Terms;
- (d) if the Customer is a body corporate, the provision of any credit terms to the Customer is subject to and conditional the Customer's officers and the Principals guaranteeing the performance of all of the Customer's obligations and (on the terms of the attached short-form guarantee and the Agreement) and each such officer and principal will be deemed to be a 'Guarantor' for the purposes of that document;
- (e) BetaBoard may conduct credit checks of the Customer and each Principal in accordance with our Standard Terms and BetaBoard's Policies;
- (f) each person signing this Account Application has authority to bind the Customer in respect of all dealings with BetaBoard from time to time; and
- (g) the information set out in this Account Application is true and correct and BetaBoard will be relying upon the information provided in assessing whether to supply Products to the Customer.

Executed by or on behalf of the Customer:

Signature: _____
Name: _____
Position: _____

Witness signature: _____
Witnessed by: _____
Date: _____

Signature: _____
Name: _____
Position: _____

Witness signature: _____
Witnessed by: _____
Date: _____

Please submit this Account Application along with the documents referred to below to accounts@betaboard.com.au

Documents to be provided with this Account Application:

- Trust Deed (if Customer a trustee)
 Current financials
 Driver's licence for all Principals

Short-Form Guarantee

1. Definitions

In this document and unless the context otherwise requires, terms defined in BetaBoard's Standard Terms (as defined in the 'Account Application' provided with this document) and the Long-Form Guarantee have the same meaning when used in this document. 'Long-Form Guarantee' means BetaBoard's long-form deed of guarantee and indemnity available at www.betaboard.com.au or otherwise on request, as amended from time to time. Each Guarantor acknowledges that they have read and understood the Long-Form Guarantee.

2. Guarantee and indemnity

The Guarantor (including any principal and officer of the Customer named in any Account Application) unconditionally and irrevocably guarantees to BetaBoard, and indemnifies BetaBoard in respect of any Liabilities in any suffered or incorrect in connection with any failure of, the due and punctual performance of the Customer's Obligations owed to BetaBoard from time to time, including the due and punctual payment of all monies and discharge of all Liabilities owed to BetaBoard.

To the extent permitted by law, no act or thing will reduce, release or discharge the Guarantor's obligations under this document, which are continuing, irrevocable, and unconditional until a final discharge has been given to the Guarantor by an authorised agent of BetaBoard.

This guarantee will be enforceable against the Guarantor despite any action which may be taken by BetaBoard against the Customer. The Guarantor's obligations are continuing and will not be avoided or affected by any time or indulgence given by BetaBoard to the Customer. Any claim which BetaBoard may have against the Customer will take priority over any competing rights of the Guarantor.

3. Long-Form Guarantee

All provisions in BetaBoard's Long-Form Guarantee will apply to the guarantee provided in accordance with this document as if they were set out in full herein, with such provisions applying with such changes as are necessary to give effect to this provision. Each Guarantor will promptly sign the Long-Form Guarantee on request from BetaBoard.

4. Security

To secure performance of the Guarantor's obligations and the Customer's Obligations to BetaBoard from time to time, the Guarantor grants to BetaBoard a first ranking fixed charge and a security interest (within the meaning of that term in the PPSA) over all present and after acquired Personal Property and a fixed charge over present and after acquired Other Property (together the **Collateral**).

The security granted pursuant to the preceding paragraph will extend to any Collateral held by the Guarantor on trust, including the Guarantor's right of indemnity against the trust property and beneficiaries of the trust, continues and attaches to the proceeds notwithstanding any unauthorised disposal or dealing with the Collateral and will not be prejudiced in any way. If any of the Customer's Obligations are not satisfied in full, the Guarantor breaches its obligations owed to BetaBoard or the security otherwise becomes enforceable, then BetaBoard may exercise any powers in respect of the Collateral that are provided for in the Long-Form Guarantee and do anything in respect of the Collateral which the Guarantor is capable of doing at law.

5. General provisions

All provisions in BetaBoard's Long-Form Guarantee under the heading 'General Provisions' will apply to the guarantee provided for in this document as if they were set out in full herein, with such provisions applying with such changes as are necessary to give effect to this provisions.

BetaBoard – Standard Terms

1. Definitions

1.1. Definitions

Unless the context otherwise requires, the meanings of terms used in the Agreement are as follows:

- (a) **Account Application** means any account application or similar form completed by the Customer that relates to the supply of Products by BetaBoard, including any associated guarantee given in favour of BetaBoard;
- (b) **Additional Charge** means any fees or charges for additional goods provided or additional services performed (or arranged to be performed) by BetaBoard at the Customer's request or reasonably required as a result of the Customer's conduct, including any fees or charges incurred or payable by BetaBoard in connection with arranging for the delivery, freight, storage or insurance of the Products;
- (c) **BetaBoard** means Budcarl Pty Ltd ACN 056 239 359 as trustee for the BetaBoard Trust trading as BetaBoard and, where the context requires, any of its related bodies corporate as that term is defined by the *Corporations Act 2001* (Cth);
- (d) **BetaBoard Policies** each of BetaBoard's published or otherwise disclosed policies in effect from time to time, including its privacy policy and privacy statements, its Website Terms of Use, any of BetaBoard's terms applicable to online portals or other electronic facilities and any of BetaBoard's other policies referred to in any of such documents or these Standard Terms;
- (e) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Queensland;
- (f) **Customer** means the person that orders Products from BetaBoard from time to time, including any persons named as the 'customer', 'applicant' or similar expression in a corresponding Account Application and, where the context permits, the officers, employees and agents of the foregoing;
- (g) **Guarantor** means any person that has provided a guarantee or indemnity to BetaBoard in connection with any obligations of the Customer from time to time;
- (h) **Liability** includes any cost, loss, liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including advisor's and solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent;
- (i) **Order** means an order for Products placed by or on behalf of the Customer from time to time, and where an order is subsequently amended, refers to the final amended order that is accepted by BetaBoard in accordance with these Standard Terms;
- (j) **Products** means any goods (as well as any ancillary or related services) supplied or procured by BetaBoard for the Customer from time to time, and when the term is used in the context of a particular Order means the Products the subject of that Order;
- (k) **Standard Terms** means the standard terms and conditions contained in this document, as amended from time to time;
- (l) **Website** means BetaBoard's website, located at the following URL: www.betaboard.com.au or such other of BetaBoard's websites from time to time; and
- (m) **Website Terms of Use** means the terms of use and related BetaBoard policies published on the Website, which at the date of these Standard Terms is located at the following URL: www.betaboard.com.au, including any amended or updated terms of use or policies available on the Website from time to time.

2. General

2.1. Documents comprising the Agreement

- (a) The '**Agreement**' comprises these Standard Terms, any Account Application and any guarantee provided by a Guarantor (but excludes any delivery notes, additional comments or terms submitted by the Customer with an Order, including via the Website).
- (b) In the event of any inconsistency between the documents constituting the Agreement, unless expressly stated to the contrary, the documents will rank in the order of precedence in the order in which they are listed in paragraph (a) above.
- (c) To the extent the law permits, no other terms or conditions (including those contained in any document submitted by the Customer) will apply to the supply of any Products nor will it impose any obligations on BetaBoard, except where terms and conditions form part of the Agreement pursuant to paragraph (a) above.

2.2. When Customer bound

Subject to the preceding clause, these Standard Terms apply to all transactions between the Customer, the Guarantor and BetaBoard relating to the sale of Products and the provision of related services (including all quotations, contracts and variations) and the Customer and the Guarantor will be bound by these Standard Terms from the time it first signs a document forming part of the Agreement or from when the Customer first places an Order (whichever is the earlier).

2.3. Update to Standard Terms

To the extent the law permits, BetaBoard may amend these Standard Terms and will notify the Customer of the amendments by publishing the amended Standard Terms on its Website or by written notice to the Customer (including by providing notification on invoices issued to the Customer), and the amended terms will apply to any Orders placed for Products after such notice, unless the Customer notifies BetaBoard that it does not accept the amended Standard Terms and elects to terminate the Agreement. If the Customer provides such notification, then without prejudice to BetaBoard's

other rights BetaBoard may cancel any outstanding Orders and the Customer will remain liable for any Products supplied prior to the termination of the Agreement.

3. Orders

3.1. Submitting Orders

- (a) The Customer may submit an Order for the purchase of the Products through any means permitted by BetaBoard from time to time (which may include by telephone, email, letter or through the Website).
- (b) Every Order must include any information BetaBoard may require, including details of the relevant Products to be ordered (and any applicable product codes) and the Customer's requested collection or delivery date and address (if applicable).
- (c) Following receipt of an Order, BetaBoard may notify the Customer of any required changes to be made to, or additional matters to be included in, the Order (including the prices or any changes to the prices for the Products the subject of the Order) and any Additional Charges relevant to the Order (which may be an estimate or rate). If this occurs, the Customer must promptly confirm in writing that it accepts or rejects the variations proposed by BetaBoard, prior to BetaBoard being obliged to accept or fulfil the Order.

3.2. Acceptance of Orders

- (a) BetaBoard may either accept or reject any Order submitted by a Customer in whole or in part. Any costs incurred by BetaBoard in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (b) If BetaBoard accepts an Order submitted by the Customer, BetaBoard shall provide written notice of its acceptance to the Customer, at which point a contract is formed for the supply of the relevant Products on the terms of the Agreement. However, any electronic notification that an Order has been accepted via the Website is subject will not be treated as acceptance of an Order.
- (c) Once BetaBoard accepts an Order, it will advise the Customer of the proposed date that the Products will be ready for collection (or delivery, if agreed by BetaBoard). To the extent the law permits, any indication in any Order or communication from BetaBoard of the time frame for the supply of the Products is an estimate only and BetaBoard will not be liable to the Customer for any Liability suffered if the time frame is not met.

3.3. Variation of Orders

- (a) An Order cannot be cancelled or varied without BetaBoard's consent. Where an Order is cancelled by the Customer, the Customer indemnifies BetaBoard against all Liability incurred by BetaBoard as a result of the cancellation, including any loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (b) If the Customer wishes to vary an Order after it has been accepted by BetaBoard, BetaBoard reserves its right to further amend the Order or its quoted prices, including by adding Additional Charges in respect of any extra costs incurred in connection with the variation. BetaBoard may accept or reject any variation in its absolute discretion.

4. Pricing, invoicing and payment

4.1. Price for Products

- (a) If the Products are purchased via the Website, the price payable for the Products will be the price advertised on the Website (subject to any contrary provisions in the Website Terms of Use). Otherwise, the price payable for the Products will be the price advised to the Customer by BetaBoard prior to (or at the time of) acceptance of the Order, and if no such price is advised then BetaBoard will charge its then current prices at the time of acceptance of the Order. Any indication of prices in any advertised or other material is not binding on BetaBoard.
- (b) The prices and charges referred to in the Order or notification from BetaBoard do not include any charges for the delivery of the Products, do not include GST, taxes, duties or Additional Charges or other sums required to be paid to BetaBoard in accordance with these Standard Terms, which the Customer must pay in addition to the agreed prices for the Products.

4.2. Quotes

BetaBoard may, from time to time, provide Customers with quotes for the prices of its Products. If BetaBoard provides a Customer with a quote, the price for the Product specified in the quote is valid for thirty (30) days or the period specified in the quote, whichever is shorter. Nothing in this clause 4.2 shall be construed as prejudicing BetaBoard's ability to either accept or reject an Order pursuant to clause 3.2(a).

4.3. Additional Charges

- (a) Where these Standard Terms entitle BetaBoard to impose any Additional Charges, the amount of the Additional Charge will be calculated as follows:
 - (i) where the sum or rate of the Additional Charge is included in an accepted Order or invoice (including a pro forma invoice) that is not later varied in accordance with these Standard Terms, the sum or rate specified in the Order or invoice (as the case may be);
 - (ii) in all other cases, the sum reasonably determined by BetaBoard that represents full costs and expenses incurred in connection with the matter giving rise to the Additional Charge plus a mark-up of 20%.
- (b) The services for which BetaBoard may impose Additional Charges include specific packaging, freight, transport, handling (including unloading Products at the Customer's premises) or insurance charges not specifically included in the accepted Order.

4.4. Invoicing

- (a) BetaBoard may issue an invoice (including a pro forma invoice) to the Customer at any time, including at the time of accepting an Order or after the Products have been supplied.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as the price for the Products as set out in the accepted Order (as varied in accordance with these Standard Terms) and any Additional Charges. This paragraph does not release the Customer from any other obligations to pay as provided for in the Agreement.
- (c) BetaBoard is under no obligation to supply or deliver any Products when any invoice has not been paid when due. Despite the Customer paying for any Products prior to supply, the Customer obtains no rights in such Products unless and until title passes to the Customer in accordance with the Agreement.

4.5. Payment terms

- (a) Unless BetaBoard has agreed to provide the Customer credit terms in respect of the relevant Order, the Customer must pay any invoice issued by BetaBoard immediately upon receipt and in any event prior to collection of any Products (or dispatch of the Products from BetaBoard's premises, if so agreed by BetaBoard). Any requested credit amount, terms or limit in any Account Application will not be binding on BetaBoard unless BetaBoard expressly approves any credit terms in writing.
- (b) All monies are payable to BetaBoard at its principal place of business in the manner BetaBoard reasonably requires from time to time. BetaBoard may apply any payment received from the Customer or the Guarantor to any amount owing or payable by the Customer (or any other persons comprising the Customer) or the Guarantor to BetaBoard from time to time on any account whatsoever.
- (c) The Customer will pay BetaBoard on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to BetaBoard, calculated on daily balances and compounding monthly until paid. Interest is payable at the end of the month in which the interest accrued and earlier on demand. The Customer must also pay all costs and expenses, and indemnify BetaBoard against any Liabilities incurred by BetaBoard, associated with collecting any overdue amounts or enforcing BetaBoard's rights.
- (d) The Customer is not entitled to withhold or retain any money owing to BetaBoard notwithstanding any default or alleged default by BetaBoard, including in respect of the supply of allegedly faulty or defective Products or a delay in the provision of Products. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

4.6. Credit terms

- (a) BetaBoard may agree to provide the Customer with credit terms in respect of any particular Order or on an ongoing basis until revoked on such conditions imposed by BetaBoard from time to time (which will include the requirement for the Customer to pass credit checks and be accepted by BetaBoard's relevant insurers).
- (b) If credit terms are offered, then payment is to be made strictly in accordance with those credit terms and in any event on or before the last Business Day of the calendar month following the calendar month in which the relevant Products were supplied.
- (c) BetaBoard may revoke the credit terms by notice in writing to the Customer if the Customer fails to make payment of overdue amounts for a continuous period of 5 Business Days or the Customer otherwise breaches the Agreement.
- (d) If the credit terms offered by BetaBoard are revoked in accordance with clause 4.6(c) and any further Orders are accepted by BetaBoard from the Customer, then those Products must be paid for prior to collection or dispatch from BetaBoard's premises.
- (e) A statement in writing signed by an authorised officer of BetaBoard from time to time setting out the moneys due or owing to BetaBoard at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

4.7. GST

- (a) In the Agreement and unless the context otherwise requires:
 - (i) **GST** and **GST Law** have the same meaning they are given in *A New Tax System (Products and Services Tax) Act 1999* (Cth) and any words and expressions defined in the GST Law have the same meaning in clauses concerning GST; and
 - (ii) references to GST also include references to any other indirect transaction taxes or consumption taxes, including any value added tax, goods and services tax, sales tax or similar tax, wherever imposed.
- (b) Unless BetaBoard otherwise agrees in the Order, any amounts quoted or prices payable for any supply to be made by BetaBoard does not include:
 - (i) GST, and the Customer must pay an amount equal to any GST for which BetaBoard may be liable on the relevant supply at the time of payment for the supply (or such later time as BetaBoard provides a tax invoice or adjustment note for the supply); or
 - (ii) any other taxes, duties, excise fees, tariffs or other government or mandatory charges that may apply in connection with the supply of the Products (except for any income tax imposed directly on BetaBoard), which will be the Customer's responsibilities and the Customer must pay an amount equal to any liability relating to the foregoing at the time of payment for the Products or otherwise on demand.

- (c) If a party provides payment for a claim or a right to claim under or in connection with the Agreement (for example, for a breach of any warranty or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant against, the amount of that GST.

5. Terms of supply of Products

5.1. Delivery of the Products

BetaBoard may, in its absolute discretion, agree to deliver the Products. If BetaBoard has agreed to deliver the Products, then unless BetaBoard otherwise agreed at the time of accepting the Order:

- (a) the delivery terms will be notified to the Customer prior to dispatch of the Products;
- (b) the Customer must arrange for all approvals or clearances required, as well as the safe unloading of the Products at the delivery location at the time the Products are delivered, and risk in the Products will pass at the time immediately before unloading of the Products at the delivery location; and
- (c) if the prices in the Order do not specifically include BetaBoard's costs in connection with delivery or where the Customer requests BetaBoard or its delivery provider to unload or place the Products at a location other than on the street at the delivery location, then the Customer will incur Additional Charges in respect of the delivery which will include the costs charged to BetaBoard plus a mark-up of 20%.

5.2. Collection of the Products

- (a) If BetaBoard has not agreed to deliver the Products to the Customer, then BetaBoard will notify the Customer of the date that the Products are to be available for collection as well as the collection address, and the Customer must (at its cost and risk) arrange for the collection, loading and transport of the Products from that premises (during normal business hours) on the date so notified and risk in the Products will pass once the Customer begins loading the Products. For the avoidance of doubt, BetaBoard will not be liable for any damage to the Products in transit where the Customer has engaged a third party to arrange delivery of the Products
- (b) If the Customer does not collect the Products from BetaBoard's premises within 10 Business Days of the collection date notified to the Customer, then risk in the Products passes to the Customer from that date and BetaBoard may store the Products and charge the Customer storage costs and expenses as Additional Charges. If the Products are not collected within 30 days of the collection date notified to the Customer, then BetaBoard may dispose of the Products and recover any Liability incurred by BetaBoard.

5.3. Acceptance of goods

The Customer undertakes to promptly inspect the Products upon receipt for any defects, faults or other non-compliance with the Agreement. If the Customer fails to notify BetaBoard in writing of any defects, faults or other non-compliance with the Agreement within 10 Business Days from date of delivery or collection, then the Customer is deemed to have accepted the Products and that the Products are fully compliant with the Agreement. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

5.4. Risk and title

- (a) Property and title in Products does not pass to the Customer until all money owing to BetaBoard on any account is paid in full without any set off or counterclaim.
- (b) If the Customer fails to pay any amounts due to BetaBoard, BetaBoard, its agents and their respective employees and contractors have the right and are granted an irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) to exercise BetaBoard's rights under the Agreement, including the right to repossess the Products or any part of them.
- (c) Pending payment in full, the Customer must ensure that if the Products are damaged or destroyed then the proceeds of any insurance policy are paid directly to BetaBoard.

5.5. PPSA & Security

- (a) In this clause 5.5 and unless the context otherwise requires, capitalised terms that are not otherwise defined in these Standard Terms have the same meaning given to them in the *Personal Property Securities Act 2009* (Cth) (PPSA).
- (b) In addition to any lien, security or rights as owner that may arise in BetaBoard's favour under the Agreement, by operation of law or statute (which is hereby expressly preserved), the Customer also grants BetaBoard a Security Interest (which, for the avoidance of doubt, will be a Purchase Money Security Interest) in the Products and to secure the Customer's obligations to BetaBoard from time to time. BetaBoard may effect a registration on the Register in any manner it sees fit.
- (c) To the extent the law permits, the Customer (and any Guarantor) waives any rights it has under the PPSA (including any rights to receive notices, statements or documents from BetaBoard), BetaBoard need not comply with any provisions of the PPSA (but BetaBoard may rely on all rights and remedies under the PPSA and BetaBoard will separately have all the rights and remedies under Chapter 4 of the PPSA as if they were stated in these Standard Terms but without any corresponding obligations). The Customer (and any Guarantor) must do all things requested to preserve BetaBoard's rights under the Agreement (including providing all information and notifying BetaBoard of any changes to any details or information that may be relevant to any Security Interest held by BetaBoard and signing any further documents requested by BetaBoard to give effect to its security).
- (d) No party will disclose any information of the kind mentioned in section 275(1) of the PPSA, except where disclosure is required by section 275(7). BetaBoard will not be liable to the Customer for disclosing any information in contravention of this paragraph.
- (e) Each of the officers and principals of the Customer who are named in any Account Application or otherwise sign any constituent parts of the Agreement will be considered a 'Guarantor' for the purposes of this Agreement.

- (f) In consideration of BetaBoard supplying Products to the Customer at the request of each Guarantor, each Guarantor irrevocably guarantees to BetaBoard the due payment and punctual performance of all the obligations and Liabilities of the Customer in connection with the Agreement (including the accuracy of any warranties given to BetaBoard) from time to time and indemnifies and undertakes to keep indemnified BetaBoard against any and all Liabilities that BetaBoard may suffer, incur or sustain in any way in connection with any breach of the Agreement or any laws by the Customer or any Guarantor. This is a continuing guarantee and indemnity and to the extent the law permits BetaBoard's rights and the Guarantor's obligations and Liabilities will not be prejudiced by any act or omission of BetaBoard or anything else whatsoever, including any failure on the part of any person who is intended to be a Guarantor not being bound by the Agreement.
- (g) The Guarantor acknowledges receiving good consideration for its covenants under the Agreement and acknowledges that BetaBoard would not apply any Products to the Customer without the guarantees.
- (h) The provisions of BetaBoard's standard long-form guarantee (which at the date of these Standard Terms is available at www.betaboard.com.au, or as otherwise notified to the Guarantor or Customer by BetaBoard from time to time) (referred to as the 'Standard Guarantee' in the Agreement) will be binding on the Guarantor and will be deemed to be incorporated into the guarantee given by the Guarantor pursuant to these Standard Terms with such changes as are necessary to give effect to this provision.
- (i) Without prejudice to any other rights of BetaBoard under the Agreement or at law, the Customer (and any Guarantor) grants a Security Interest in all present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) in which any of them have a right or Interest and separately grants a fixed charge over all present and after-acquired other property in which any of them have a right or Interest from time to time.
- (j) The Customer and the Guarantor agree to sign all documents and do all things requested by BetaBoard from time to time to enable BetaBoard to obtain, register and exercise any rights it has in connection with any security it has over the property of the Customer or the Guarantor. The Customer and the Guarantor agree that BetaBoard's rights and powers under the Standard Guarantee will apply to the security taken pursuant to these Standard Terms and the Agreement, with such changes as are necessary to give effect to this provision.
- (k) When exercising any security arising in connection with the Agreement or any guarantee, BetaBoard may do anything in respect of the property subject to the security that the person granting the security would otherwise be capable of doing at law, including appointing a receiver in respect of the property, and through itself or through an agent exercising the powers granted to receivers under section 420(1) and (2) of the *Corporations Act 2001* (Cth) as if references in that section to property were references to the relevant property the subject of the security and references to the receiver were references to BetaBoard. Any receiver appointed in connection with the Agreement must be fully indemnified by the Customer for any Liabilities incurred and will always be by the Customer's agent.

6. Warranties and liability

6.1. Warranties by Customer

To the extent permitted by law, the Customer warrants, acknowledges and agrees at all times that:

- (a) all Products are being purchased by the Customer are used solely for use in the Customer's business and the Customer is not purchasing the Products for personal or domestic use;
- (b) any person submitting an Order, whether an officer, employee, contractor, agent, or other person with ostensible authority to do so on behalf of the Customer, is properly authorised by the Customer, and the person submitting any Order or signing any constituent part of the Agreement separately warrants that he or she is duly authorised to bind the Customer;
- (c) the particulars in the Order and all other information provided to BetaBoard in connection with the Agreement (including in any Account Application) are true, correct and not misleading in any respect (including by way of omission) and are up to date;
- (d) it has (and ensured its officers, employees and agents have) read, understood and agreed to each of BetaBoard's Policies (which, for the avoidance of doubt, do not form part of the Agreement) and the terms of the Agreement prior to placing any Order and all required consents, waivers or agreements are in place to ensure continued compliance with the foregoing; and
- (e) if the Customer or a Guarantor is the trustee of any trust, the Agreement is binding on the Customer and the Guarantor (as the case may be) in its personal capacity and in its capacity as trustee of any trust, the Customer and the Guarantor (as the case may be) is validly appointed as the sole trustee and will not allow any new trustee to be appointed and the Customer and the Guarantor (as the case may be) has the right to be fully indemnified out of the trust assets and from the beneficiaries for all liabilities in connection with the Agreement.

6.2. BetaBoard Policies

The Customer and the Guarantor acknowledge and agree that they have read and understood the BetaBoard Policies and they undertake to ensure that the Customer, the Guarantor and their respective employees, agents and contractors at all times comply with the BetaBoard Policies (which, for the avoidance of doubt, will not form part of the Agreement or create any enforceable rights against BetaBoard). Despite the foregoing, where the BetaBoard Policies grant BetaBoard rights (including in respect of pricing errors on the Website or in respect of the handling of personal information), those rights are enforceable by BetaBoard despite the BetaBoard Policies not forming part of the Agreement.

6.3. Privacy

Subject to any applicable restrictions in the *Privacy Act 1988* (Cth), the Customer, the Guarantor and their respective officers authorise BetaBoard to make consumer and commercial credit enquiries concerning them in connection with this Agreement (or BetaBoard's decision to enter into, or enforce, it), and to exchange with any credit reporting body and any other person (including a ratings agency, a credit enhancer or other credit providers) any information concerning them (including credit information, repayment history, default information and other credit-related information as described in BetaBoard's Policies).

6.4. Implied terms

- (a) Subject to paragraph (b) below, any condition or warranty which would otherwise be implied in the Agreement which is capable of being excluded is hereby excluded, and all information, specifications and samples provided by BetaBoard in relation to the Products are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Products will not entitle the Customer to reject the Products, or to make any claim or seek to recover any Liabilities in respect of them.
- (b) The Australian Consumer Law may give to the Customer certain guarantees. Where such guarantees apply to the supply of Products and liability for breach of any such guarantee can be limited, BetaBoard's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to services to the supply of services again or cost of re-supplying the services again.

6.5. Manufacturer's warranties

The Customer acknowledges that BetaBoard is not the manufacturer of the Products and that any information provided or published by BetaBoard (including via the Website) in respect of the specifications, purposes for use or warranties relating to the Products are for information purposes only and are not binding on BetaBoard. BetaBoard may assist the Customer in making a claim under any manufacturer's warranty relating to the Products, subject to the Customer reimbursing BetaBoard for its costs in doing so to the extent the law allows BetaBoard to recover such costs.

6.6. Indemnity

- (a) To the extent the law permits, the Customer indemnifies and must keep indemnified BetaBoard against any and all Liabilities incurred, suffered or otherwise arising in connection with any of the following:
 - (i) any use of the Products by the Customer or any other acts or omissions of the Customer that are not expressly permitted by the Agreement;
 - (ii) any breach by the Customer or a Guarantor of any provision of the Agreement, BetaBoard's Policies or any other obligation owed to BetaBoard or any third party from time to time.
- (b) To the extent the law permits, BetaBoard is not liable for any direct, indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits) arising out of or in any way connected with the provision of or failure to provide Products, whether based on terms of trade, negligence, strict liability or otherwise, even if BetaBoard has been advised of the possibility of such losses or damages.

6.7. Returns

In addition to any rights of the Customer under the Australian Consumer Law, BetaBoard may accept the return of Products provided all of the following conditions are met:

- (a) all returns must be approved in writing by BetaBoard and will not be offered where the Products are specifically purchased, manufactured, machined or cut to size or are made in accordance with other specifications of the Customer;
- (b) returns will only be offered where the Products are returned to BetaBoard at the Customer's cost (with freight prepaid) in a saleable condition (including with any brochures and original packaging); and
- (c) BetaBoard reserves the right to charge a handling and restocking fee of up to 15% of the price for the Products and this fee will constitute an Additional Charge. A restocking fee of 20% will apply to Rondo products and any products which BetaBoard does not ordinarily hold in stock.

7. Termination

- (a) BetaBoard may terminate the Agreement and/or refuse to complete any Order:
 - (i) if the Customer breaches any provision of the Agreement or any of its other obligations to BetaBoard;
 - (ii) if the Customer, in BetaBoard's reasonable opinion, operates its business (or is otherwise involved in any act or omission) in a manner that endangers health or safety of the public or consumers of Products, or may prejudice BetaBoard's reputation, goodwill or Intellectual Property Rights; or
 - (iii) if the Customer is insolvent or presumed to be insolvent, commits an act of bankruptcy or is declared bankrupt (as those terms as defined in the *Bankruptcy Act 1966* (Cth), has any creditors, debtors or similar petition relating to insolvency presented against it, the Customer is subject to any form of insolvency proceedings, external administration or similar court or voluntary process (including any liquidation, administration, deed or scheme of company arrangement).
- (b) The Customer must notify BetaBoard within 48 hours of the occurrence of any of the events described in paragraph (a) above.
- (c) The Customer and BetaBoard may agree to terminate the Agreement in writing.

- (d) BetaBoard may terminate this Agreement without cause by providing not less than 14 days' notice to the Customer and if that occurs BetaBoard will finalise any Order already accepted, provided no events described in paragraph (a) above have occurred. The Customer and BetaBoard may agree to terminate this Agreement in writing.
- (e) The termination of the Agreement is without prejudice to any rights that BetaBoard may have at law or statute (which are hereby expressly preserved) and upon termination all monies owing to BetaBoard (whether due for payment or not) will become immediately due for payment.
- (f) Any obligations of the Customer, or rights of BetaBoard, under or in connection with the Agreement that expressly or impliedly survive the termination of the Agreement (or are capable of surviving) will continue in full force and effect.

8. General Provisions

8.1. Notice

Any notice, demand, termination procedure or other communication relating to the Agreement must be given by being personally served on a party, being left at the party's last known address, being mailed to a party's last known address (in which case it will be deemed to be served in 2 Business Days after posting) or being sent by email to the address notified by the recipient for sending notices from time to time (which, in the case of BetaBoard, is sales@betaboard.com.au in which case it will be deemed to be served on the same day if sent before 4:00 p.m. in the place of receipt.

8.2. Further acts

The Customer and Guarantor must, upon request from BetaBoard, promptly do any further act and execute and deliver any further documents which BetaBoard may reasonably request to give effect to the Agreement or any of BetaBoard's rights.

8.3. Assignment

The Customer must not assign or otherwise deal with any of its rights or obligations under the Agreement without the prior written consent of BetaBoard. BetaBoard may assign or otherwise deal with any of its rights or obligations under the Agreement without the Customer's consent.

8.4. Variation and waiver

Any variation of or to the Agreement will not have any effect whatsoever unless such variation is reduced to writing and signed by BetaBoard. Further, any failure of BetaBoard to exercise any or all of its rights or powers under the Agreement at any time and for any period of time shall not constitute a waiver of any of BetaBoard's rights or powers arising pursuant to the Agreement.

8.5. No merger

Nothing in the Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that BetaBoard may have against another party or any other person at any time.

8.6. Force Majeure

If the performance of the Agreement or any obligation under it (except for any obligation to pay) is prevented, restricted, interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of the party obliged to perform it (including any Act of God, act of any governmental or competent authority, the imposition of any new taxes, excise fees, tariffs or other mandatory charges or an increase in same, default of any suppliers under any contract to which BetaBoard is a party or seizure or stoppage of Products in transit), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under the Agreement with the utmost despatch whenever such causes are removed or diminished. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of the Agreement.

8.7. Entire agreement

To the extent the law permits, the Agreement represents all the terms and conditions between the parties, and the Customer (and any Guarantor) acknowledges that it has not entered into the Agreement in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection the Agreement from BetaBoard or its agents. The parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to the Agreement or the supply of any Products.

8.8. Counterparts

Any documents forming part of the Agreement may be executed and exchanged in any number of counterparts, all of which taken together constitute one and the same document.

8.9. Severance

If any provision of the Agreement in favour of BetaBoard exceeds what is permitted by law (**Void Term**), then the following provisions will apply:

- (a) the Void Term shall be interpreted read down only to the extent required to ensure it is enforceable; and, if the unenforceability of the Void Term is not rectified by this provision
- (b) if the Void Term is unenforceable due to it imposing liability on the Customer, then the Customer shall only be liable to the extent that the Customer caused or contributed to the liability (but nothing in this provision will impact BetaBoard's right to receive the price for the Products);
- (c) if the Void Term is unenforceable due to it releasing BetaBoard from an obligation, BetaBoard will still be liable to perform that obligation to the extent BetaBoard either caused or contributed to the event giving rise to the obligation or breached the Agreement or terms implied by law that cannot legally be excluded,

and if the foregoing does not cure the invalidity or unenforceability, the Agreement does not include the Void Term and the remainder of the Agreement continues in full force.

8.10. Governing Law

The Agreement is governed by the laws of the Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Queensland.

8.11. Multiple parties

- (a) If more than one person is the Customer or the Guarantor, that expression refers to them, and the obligations of the Customer and Guarantor (as the case may be) in connection with the Agreement binds them jointly and severally.
- (b) Despite the definition of 'BetaBoard' in clause 1.1 referring to BetaBoard's related bodies corporate, only the entity that is supplying the relevant Products to the Customer will be bound to fulfil the relevant Order. However, each entity that comprises 'BetaBoard' is entitled to rely on the Customer's covenants and obligations in connection with the Agreement and enforce same directly against the Customer, and the Customer will be deemed to have received notice of acceptance of such covenants and obligations when the first Order is accepted.

8.12. Discretion

- (a) Where the Agreement allows BetaBoard a discretion or power (including where 'may' is used), the discretion or power may be exercised in BetaBoard's absolute discretion, without giving reasons and may be conditional.
- (b) Where the Agreement requires BetaBoard to agree to something or BetaBoard's consent to be obtained, the agreement must be in writing by a duly authorised representative of BetaBoard and the consent must be prior written consent.

8.13. Interpretation

In the Agreement:

- (a) headings used in these Standard Terms are for convenience only and do not affect interpretation of these Standard Terms;
- (b) the provisions of the Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for proposing or preparing the Agreement or the inclusion of the provision in it or because that party relies on a provision of the provision to protect itself; and
- (c) the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) are not to be construed as words of limitation and do not limit what else might be included nor does the incorporation of more than one obligation in a provision limit any other obligation contained in that provision,

and unless the context otherwise requires:

- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) the singular includes the plural and vice versa and words importing a gender include every other gender;
- (f) a reference to a clause or paragraph is a reference to a clause or paragraph of these Standard Terms;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity.
- (h) a reference to a party includes a reference to the party's executors, administrators, successors, permitted substitutes, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee;
- (i) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise) and includes a reference to any variation, replacement or novation of it; and
- (j) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

Deed of Guarantee

Details

Date of Deed	___ / ___ / _____
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Parties		
BetaBoard	Name	Budcarl Pty Ltd ACN 056 239 359 as trustee for the BetaBoard Trust
	ABN	90 766 864 943
	Address	58 Reginald Street, Rocklea Queensland 4106

Guarantor	Name	
	Address	
	Email	

Other Details	
Customer	Name
	ABN
	Address

Background

- A. BetaBoard is a wholesaler of plasterboard, fibre cement, insulation materials, equipment, and other products and the Customer is a current or prospective customer of BetaBoard and wishes to purchase Products from BetaBoard on credit terms in accordance with the Agreement.
- B. BetaBoard has agreed to supply Products to the Customer on the condition that the Guarantor guarantees the obligations of the Customer from time to time, which the Guarantor has agreed to on the terms of this document.

Terms

1. Interpretation

1.1. Definitions

In this document and unless the context otherwise requires, terms defined in the Standard Terms have the same meaning when used in this Guarantee (subject to any variation in the below table) and the following definitions apply:

Term	Definition
Agreement	has the meaning given to that term in the Standard Terms and includes a reference to any other agreement between BetaBoard and the Customer for the supply of products by BetaBoard from time to time.
Collateral	all of the Personal Property and the Other Property, including the Guarantor's right, title and interest in the Personal Property and Other Property and any other property over which BetaBoard is to be granted a Security at any time pursuant to this Guarantee, and where the context admits any part thereof.
Customer	the person identified as such in the Details, and includes any related bodies corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)) of the Customer that submit Orders for the purchase of Products from BetaBoard from time to time, any other person who comprises the 'Customer' as defined in the Standard Terms and any successors to the business of that person or persons.
Customer's Obligations	all obligations and Liabilities of the Customer to BetaBoard at any time, including: (a) any Liabilities of BetaBoard for which the Customer is liable for (whether alone or jointly with any other person), the due and punctual payment by the Customer

Term	Definition
	<p>and each other guarantor of the Customer's Obligations of all monies or other liabilities (whether present or future, actual or contingent) that may be owing to BetaBoard from time to time; and</p> <p>(b) the due and punctual performance and observance by the Customer and each other guarantor of the Customer's Obligations of all the terms, conditions, warranties, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) that may be owed to BetaBoard from time to time,</p> <p>on any account whatsoever, including in connection with the Agreement, this Guarantee, or otherwise, and irrespective of whether the Customer is liable solely or together with any other person, the circumstances in which BetaBoard comes to be owed each Liability or obligation (including under any assignment) or the capacity in which the Customer and BetaBoard come to owe or to be owed that Liability or obligation.</p>
Guarantee	this document and includes a reference to the guarantee of the Customer's Obligations, the associated indemnities, the Security and other covenants of the Guarantor as provided for in this document.
Insolvency Event	in respect of a person, includes any event of insolvency or material adverse change to the person's financial position, the person becoming insolvent or presumed to be insolvent, the person committing an act of bankruptcy or being declared bankrupt (as those terms as defined in the <i>Bankruptcy Act 1966</i> (Cth), having any creditors, debtors or similar petition relating to insolvency presented against the person, the person being subject to any form of insolvency proceedings, external administration, receivership, having a controller appointed to its assets or any similar court or voluntary process (including any liquidation, administration, deed or scheme of company arrangement).
Other Property	all the Guarantor's present and after-acquired rights and interests in land and any other property, rights and interests (whether tangible or intangible, present or future) that are not Personal Property in which the Guarantor has rights or interests or may in the future have rights or interests.
Personal Property	all of the Guarantor's present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) (whether tangible or intangible, present or future) and all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) (whether tangible or intangible, present or future) in which the Guarantor has rights or interests or may in the future have rights or interests.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
Security	any security, mortgage, charge or other encumbrance to be granted in favour of BetaBoard by the Guarantor from time to time, including the security over the Collateral provided for in this Guarantee, and includes a reference to any document giving effect to the foregoing and any property held by the Guarantor on trust (whether or not such trust is disclosed in this document)
Standard Form Security	a security document or documents in BetaBoard's standard form from time to time (including any particular form for the relevant type or class of Collateral) to provide for BetaBoard to be granted security over the Collateral to secure the Customer's Obligations and the Guarantor's obligations and Liabilities from time to time, which may, in BetaBoard's discretion (without limitation), be a mortgage over real property, a general security agreement or deed over all any other Collateral or such other standard form security.
Standard Terms	BetaBoard's standard terms of supply available at www.betaboard.com.au or otherwise on request, as amended from time to time.

1.2. Liability as Guarantor and indemnifier

- (a) Any reference in this Guarantee to the liabilities of the Guarantor will be construed as a reference to its obligations, liabilities or other covenants, whether as a guarantor or an indemnifier or both, under this Guarantee.
- (b) The use of the expression 'Guarantor' in this Guarantee in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this Guarantee.

- (c) The provisions of this Guarantee which preserve the liability of the Guarantor as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this Guarantee.

1.3. **Principal obligation**

Each obligation of the Guarantor under this Guarantee constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this Guarantee, any limitation on the liability of any Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated, whether or not BetaBoard's rights against the Customer are prejudiced in any way. Further, if any of the matters comprising the Customer's Obligations are not enforceable against the Customer, then the obligations will be taken to be enforceable for the purposes of this Guarantee.

2. **Guarantee**

2.1. **Obligations guaranteed**

The Guarantor unconditionally and irrevocably guarantees to BetaBoard the due and punctual performance, satisfaction and payment in full of all obligations owed to BetaBoard by the Customer from time to time, including the Customer's Obligations.

2.2. **Indemnity**

The Guarantor as a separate additional and primary liability irrevocably and unconditionally agrees to indemnify, and keep indemnified, BetaBoard, its officers, employees, attorneys and agents from and against any and all Liabilities, demands and claims of any kind or nature suffered or incurred by BetaBoard however arising in connection with any of the following:

- (a) any breach of the Agreement by the Customer or any other failure by the Customer to satisfy the Customer's Obligations;
- (b) any breach by the Guarantor of this Guarantee, the Agreement or any other agreement with BetaBoard;
- (c) any enforcement (or attempted enforcement) of any Security, this Guarantee or the Agreement, including any rights, powers or remedies arising in connection with the same; and
- (d) any obligation or Liability that would otherwise form part of the Customer's Obligations being void, voidable or unenforceable against or irrecoverable from the Customer for any reason, whether or not BetaBoard knew or ought to have known that reason.

2.3. **Result of non-payment or non-performance**

Without limiting the Guarantor's Liability under the preceding clauses or BetaBoard's rights at law or in equity, if the Customer defaults or fails in the due and punctual:

- (a) payment of any money owing to BetaBoard in connection with the Agreement or otherwise forming part of the Customer's Obligations, the Guarantor must pay that money to, or as directed by, BetaBoard, immediately on demand without any right of set off or counterclaim; or
- (b) performance of any of its Liabilities, obligations and agreements in the Agreement or otherwise forming part of the Customer's Obligations, the Guarantor indemnifies BetaBoard against any Liability, loss, damage, cost, expense (including legal expenses on a full indemnity basis) or Claim sustained or incurred (directly or indirectly) in connection with that default or failure and BetaBoard may separately call upon the Guarantor to remedy the Customer's default or failure.

Nothing in this clause requires BetaBoard to make a demand for payment to the Customer or the Guarantor as a precondition to the Guarantor being liable.

3. **Payment, costs and interest**

3.1. **Manner of payment**

All payments to be made by the Guarantor under this Guarantee must be made in immediately available funds in full, free and clear of any deductions or withholdings, and without any set off or counterclaim, as, when and where BetaBoard may from time to time direct.

3.2. **Application of payments**

BetaBoard has an absolute discretion (without the need to communicate its election to any person) to apply any payment received by it in reduction of such part of the Customer's Obligations or the Guarantor's obligations and Liabilities as it elects at any time notwithstanding any other matter.

3.3. **Interest on overdue amounts**

The Guarantor must pay interest at the rate of 10% per annum on each amount due and payable but not paid by the Customer or the Guarantor, calculated on daily balances and compounding monthly until paid. Interest is payable at the end of the month in which the interest accrued and earlier on demand.

4. Preservation of liability

4.1. Preservation of Guarantor's obligations

The Guarantor's Liability and obligations under this Guarantee (including any Liabilities or obligations in connection with any guarantee provided by the Guarantor pursuant to the Agreement and any Security) are absolute, binding and unconditional in all circumstances, and are not adversely affected by anything which would otherwise reduce, release or discharge that Liability or obligation (whether or not the Customer or BetaBoard is aware of it or consents to it and despite any legal rule to the contrary), to the extent the law permits.

4.2. No matter to prejudice Guarantee

Without limiting clause 4.1, the Guarantor's Liability and obligations under this Guarantee will not be reduced, released or discharged by any one or more of the following:

- (a) any time, waiver, indulgence, concession, neglect, forbearance, covenant, consent granted to, or composition with, any Guarantor or other person not to sue or any other indulgence, the release of any Security or any other matter or thing;
- (b) the Agreement or any payment or other act being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future or any of the Customer's Obligations not being enforceable;
- (c) any variation to the Agreement, whether or not the variation was consented to by the Guarantor and whether or not the Guarantor is bound by the varied Agreement;
- (d) an Insolvency Event in respect of the Guarantor, the Customer or any other person or any avoidance (by statute or for any other reason whatsoever) of any payment due to BetaBoard by or on behalf of any person, and if an Insolvency Event occurs and any payments made to BetaBoard are liable to be set aside then the Guarantee will be reinstated to ensure BetaBoard retains all rights it may have had against the Guarantor;
- (e) any assignment of, or other dealing in connection with, BetaBoard's rights under this Guarantee or any Security; or
- (f) any change in the constitution of any Guarantor, the Customer or BetaBoard, any change in the partners that make up any partnership of the Guarantor or the Customer or any breach of trust or variation to any trust deed.

4.3. Guarantor's obligations complementary

If the Guarantor has also provided a guarantee to BetaBoard pursuant to the Agreement, the Guarantor's obligations under this Guarantee and under the Agreement are intended to be correlative and complementary of one another and all rights of BetaBoard under the Agreement and this Guarantee may be exercised despite any inconsistency.

4.4. Payment in gross

All benefits, compositions and payments received by BetaBoard from or on account of the Customer's Obligations (including any dividends upon the winding up or bankruptcy of the Customer or the Guarantor), or from any other person, or from the realisation or enforcement of any Security, will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any amount received or recovered by BetaBoard, unless and until the Customer's Obligations and all monies owing to BetaBoard have been paid in full.

4.5. Guarantor generally not to recover

Until the whole of the Customer's Obligations have been paid or satisfied in full, the Guarantor must not (except with the prior written consent of BetaBoard) in any way or at any time take steps to recover or enforce a right or claim against the Customer relating to any sum paid by the Guarantor to BetaBoard under this Guarantee. Further, the Guarantor must comply with all directions given by BetaBoard in respect of any Insolvency Event affecting the Customer to ensure that BetaBoard's receives the full benefit of any payment that would otherwise fall due to the Guarantor from the Customer.

5. Security

5.1. Security

To secure all of the Guarantor's obligations and Liabilities to BetaBoard from time to time, including the punctual payment and performance of the Customer's Obligations, the Guarantor grants to BetaBoard:

- (a) a charge and a security interest (within the meaning of that term in the PPSA) over the Personal Property; and
- (b) a fixed charge over the Other Property.

5.2. After acquired

The Guarantor acknowledges that, for the purposes of section 20(2)(b)(ii) of the PPSA, the Security Interest over the Personal Property is taken in all of the Guarantor's present and after-acquired property. This does not limit the scope of the security granted to BetaBoard or any other covenants in BetaBoard's favour in any way.

5.3. **Priority**

The parties acknowledge that the Security over the Collateral has the same priority in relation to all the Customer's Obligations, including future advances or credit extended, and is to be a first ranking security. Nothing in this Guarantee is to be interpreted as an agreement to subordinate or postpone the Security that BetaBoard has in the Collateral in favour of any person.

5.4. **Guarantor to preserve Collateral**

The Guarantor undertakes to preserve and maintain the Collateral at all times and the Guarantor must not, without BetaBoard's prior written consent or in the ordinary course of the Guarantor's ordinary business, dispose of, deal with or encumber the Collateral or any part of it. If the Guarantor disposes of, or otherwise deals or agrees to deal with, the Collateral in breach of the Agreement, the Guarantor acknowledges that:

- (a) BetaBoard has not authorised any disposal or dealing or agreement to deal nor has BetaBoard agreed that any disposal or dealing or agreement to deal will extinguish any Security interest held by BetaBoard; and
- (b) BetaBoard's Security continues in the Collateral despite the disposal or dealing or agreement to deal and also attaches to the proceeds (and nothing in this document or the Agreement will be taken to provide otherwise).

5.5. **No obligation to marshal**

BetaBoard is under no obligation to marshal in favour of the Guarantor any security held by BetaBoard or any funds or assets that BetaBoard may be entitled to receive or claim.

5.6. **Additional security**

This Guarantee and the Security provided for in this document is in addition to, and not in substitution for, any other Security, power or right which BetaBoard now has, or may afterwards take, in respect of the Customer's Obligations, the Guarantor's obligations or Liabilities, or any part of them (including any guarantee or security provided for in the Standard Terms).

5.7. **Standard Form Security**

The Guarantor undertakes to immediately execute any Standard Form Security over the Collateral (or any part of it) as requested by BetaBoard from time to time. Unless the context otherwise requires, any reference to the 'Standard Form Security' in this document will include a reference to each security document that BetaBoard requests the Guarantor to sign (or that an attorney signs on the Guarantor's behalf) from time to time and, if BetaBoard does not have standard form security documents that fall within the definition of 'Standard Form Security' contained in clause 1.1, the definition of 'Standard Form Security' in that clause will be taken to include a reference to any documentation providing security over the Collateral (or any part of it) to secure the Guarantor's obligations and Liabilities containing such provisions as determined by BetaBoard from time to time in its absolute discretion.

5.8. **Powers**

If there is any breach of this Guarantee, any of the Customer's Obligations are not duly and punctually performed or any other event occurs or other circumstances arise where BetaBoard is entitled to enforce any Security, then (without limitation) BetaBoard may at any time without notice do any one or more of the following in the manner determined by BetaBoard in its discretion:

- (a) take possession of, seize and otherwise deal with Collateral, including by selling, transferring, assigning, leasing, hiring, exchanging or surrendering it on any terms whatsoever, and any seizure of intangible property will occur immediately upon notice to that effect from BetaBoard;
- (b) manage the Collateral and receive any rents, profits, accounts and sale proceeds derived from it, including by issuing any notice to a person owing money to the Guarantor requiring any monies to be paid directly to BetaBoard;
- (c) do anything the Guarantor, or any owner of the Collateral if not the Guarantor, could do in connection with Collateral at law (irrespective of the terms of any other encumbrance over the Collateral), including making any settlement, arrangement or compromise with any person with an interest in it;
- (d) exercise any right, power or remedy provided for under this Guarantee, at law or under BetaBoard's Standard Form Security as if such rights, powers and remedies are expressly set out in this Guarantee and irrespective of whether any Standard Form Security was executed by the Guarantor or the Guarantor had any notice of the terms of the Standard Form Security;
- (e) give up possession of any Collateral at any time without prejudice to BetaBoard's Security or the right to recover the full amount of the Customer's Obligations or any other Liabilities of the Guarantor from time to time;
- (f) appoint any person or any two or more persons jointly or severally or both to be a receiver or receiver and manager of all or any of the Collateral and through itself or through an agent exercising the powers granted to receivers under section 420(1) and (2) of the *Corporations Act 2001* (Cth) as if references in that section to property were references to the Collateral and references to the receiver were references to BetaBoard; and

- (g) do any act or thing and enter into all necessary contracts, arrangements and documents for or in relation to the performance or exercise of BetaBoard's rights or to otherwise give effect to the Security or its enforcement.

5.9. PPSA Provisions

- (a) To the extent the law permits, BetaBoard need not comply with, and the Guarantor may not exercise and waives any rights under, any provisions of the PPSA or any other law that may be contracted out of or otherwise excluded by contract. This does not prevent BetaBoard from relying on the remedies in Chapter 4 of the PPSA if BetaBoard elects to do so.
- (b) BetaBoard will separately have all the rights and remedies granted to a secured party under the PPSA as if those rights were restated in this Guarantee (but without any corresponding obligations or conditions imposed by the PPSA), with the provisions of the PPSA applying with such changes as are necessary or desirable to grant BetaBoard such rights and remedies. If BetaBoard exercises a right, power or remedy in connection with any Security, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless BetaBoard states otherwise at the time of exercise. However, this paragraph does not apply to a right, power or remedy which can only be exercised under the PPSA.
- (c) To the extent the law permits, the Guarantor waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA, the Guarantor agrees not to exercise its rights to make any request of BetaBoard under section 275 of the PPSA and the Guarantor agrees not to make any request of BetaBoard to amend or discharge any registration affected by BetaBoard on the PPS Register until all the Customer's Obligations have been fully discharged.
- (d) No party will disclose any information of the kind mentioned in section 275(1) of the PPSA, except where disclosure is required by section 275(7). No party will authorise the disclosure of any information under that section or waive any duty of confidence that would otherwise permit non-disclosure under that section. Despite the foregoing, BetaBoard will not be liable to the Guarantor if BetaBoard discloses information in breach of this paragraph and the Guarantor releases and indemnifies BetaBoard against any Liability that may be suffered or sustained by BetaBoard or the Guarantor in connection with such disclosure or any claim made by the Guarantor in connection with same.

5.10. Mortgagee in possession

If BetaBoard or an agent or attorney of BetaBoard or administrator or receiver takes possession of any Collateral neither BetaBoard, any such agent, attorney nor the administrator nor receiver shall be liable as mortgagee in possession.

5.11. Power of attorney

- (a) The Guarantor irrevocably and unconditionally appoints BetaBoard, its agents and solicitors, and their respective officers, principals, attorneys and employees with the word 'manager' in his or her job title, jointly and severally, as the Guarantor's attorney to exercise the powers granted to the attorney in this Guarantee, the Agreement or under any other Security and the Guarantor acknowledges that this appointment takes effect immediately and is not conditional.
- (b) The Guarantor acknowledges and agrees (without limitation) that the power of attorney granted under this Guarantee and under any Security is given for valuable consideration as security for the performance of the Guarantor's obligations and Liabilities, and separately as security for BetaBoard's proprietary interest in the Collateral.
- (c) The attorney may delegate its power of attorney (including this power to delegate) to any person, including any successor or assign of the attorney or any receiver or receiver and manager, and may revoke any delegation of the powers of attorney at any time or appoint a replacement or substitute attorney.
- (d) An attorney appointed under this Guarantee or any Security has the power, at any time, to do in the name of, or on behalf of, the Guarantor (or in BetaBoard's name) everything that:
 - (i) the Guarantor is expressly or impliedly required to do under this Guarantee or any Security, including executing any Standard Form Security exercising any powers or rights in connection with the Collateral, and granting further Security;
 - (ii) BetaBoard or the attorney considers necessary or desirable to complete any blank or correct any manifest error in this Guarantee, the Agreement or any Security, including anything to put the documents in registrable form or to update the details of the Customer specified in this document where the original customer has transferred or restructured its business and BetaBoard supplies Products to a different entity that is in any way related to the 'Customer' specified in the Details;
 - (iii) the Guarantor could do with respect to the Collateral (including selling it in the name of the Guarantor or exercising any other powers granted to BetaBoard in connection with the

Collateral) and everything that the Guarantor could do to remedy any such breach of failure or mitigate BetaBoard's loss arising from same, but only after there has been any breach of this document by the Guarantor, any failure on the part of anyone to perform the Customer's Obligations or any earlier time that any Security becomes enforceable,

- (iv) BetaBoard or the attorney considers necessary or desirable to exercise any rights of the Guarantor who is trustee of any Collateral (or who is party to this Guarantee in its capacity as trustee of any trust) to be indemnified out of the trust assets and exercise any rights against beneficiaries or subsequent trustees;
- (v) the Guarantor may lawfully authorise an agent to do in respect of this Guarantee, any Security and the Collateral, despite any of the above matters giving rise to a conflict.
- (e) An attorney appointed under this Guarantee may exercise its powers without any need for ratification or confirmation from, or notice to, any Guarantor. However, if an attorney asks the Guarantor to ratify or confirm any actions taken by an attorney under this power of attorney, the Guarantor will promptly do so.
- (f) The Guarantor undertakes to indemnify and keep indemnified BetaBoard and each attorney from and against any and all Liabilities incurred or in any way sustained in connection with or arising from the exercise or attempted exercise of any rights or powers of BetaBoard or the attorney under this Guarantee, any Security or at law.

6. General Provisions

6.1. Assignment

- (a) BetaBoard may deal with (including by way of assignment, transfer, novation, factoring or participating in favour of any person) any of its rights, powers, obligations or interests in connection with this Guarantee, the Collateral or any Security, without notice to or consent of the Customer or any Guarantor. The Guarantor undertakes to, at its cost and Liability, provide all assistance requested by BetaBoard in connection with (or to otherwise give full effect to) such dealings, including by signing any agreement, notice or document provided by BetaBoard.
- (b) Except as expressly permitted by this Guarantee, the Guarantor must not assign, transfer, novate or otherwise deal with any of its respective rights, obligations or interest in this Guarantee, the Agreement or any Security without BetaBoard's prior written consent.

6.2. Obligations owed to BetaBoard

- (a) Where this Guarantee imposes an obligation on the Guarantor in respect of a matter or thing, the Guarantor is responsible for complying with the obligation at all times at its own cost and Liability and must ensure that it does not permit any breach of the obligation by any third party.
- (b) Any reference to the 'Customer's Obligations' (or any similar expression) are taken to include a reference to all covenants, undertakings and other obligations of any description (including those in connection with, and ensuring the accuracy of, any representations and warranties) of the Customer or the Guarantor contained or implied in any provision of this Guarantee or any Security.
- (c) Any obligations and Liabilities of the Guarantor, or rights or powers of BetaBoard, under or in connection with this Guarantee that expressly or impliedly survive the termination of this Guarantee (or are capable of surviving) will continue in full force and effect, including any indemnities or releases provided in favour of BetaBoard.
- (d) Time is of the essence in respect of all of the obligations of the Guarantor in connection with this Guarantee and any Security.

6.3. BetaBoard's calculation

A certificate or determination in writing signed by BetaBoard or a director, company secretary or attorney of BetaBoard certifying the quantification of the Guarantor's Liability, the amounts owing in respect of the Customer's Obligations or any other act, matter or thing relating to this Guarantee or the Agreement is sufficient evidence of those matters unless the contrary is proven.

6.4. Further assurances

The Guarantor will immediately on demand by BetaBoard (and at the entire cost of the Guarantor) perform all acts and execute all agreements, assurances and other documents and instruments as BetaBoard, requires to perfect or improve the powers afforded or created, or intended to be afforded or created, by this document, including any documents that may be required to register the power of attorney provided for in this document.

6.5. When the Guarantee takes effect

- (a) To the extent the law permits, this document takes effect as a deed poll in favour of BetaBoard and is binding on a person named as Guarantor when this document is signed by that person (whether or not this document is duly executed as a deed).



- (b) This Guarantee binds each person who signs as a Guarantor even if another person (including BetaBoard) who was intended to sign does not sign it and even if any other person who was intended to guarantee the Customer's Obligations did not provide any guarantee.
- (c) Despite any provisions herein referring to 'this document' (or any similar expression), the Guarantor acknowledges and agrees that this document is intended to take effect as a deed.

6.6. **Jurisdiction**

This Guarantee is governed by and will be construed in all respects in accordance with the law of Queensland. The Guarantor submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland in respect of any proceedings in connection with this Guarantee.

6.7. **Provisions from Standard Terms**

All provisions in BetaBoard's Standard Terms under the heading 'General Provisions' (other than any force majeure clause or entire agreement clause) will apply to the Guarantee as if they were set out in full herein, with such provisions applying with such changes as are necessary to give effect to this provisions. Without limiting the foregoing, any references to the 'Customer' the relevant provisions will be treated as references to the Guarantor and any references to the 'Agreement' will be treated as references to this Guarantee.

6.8. **Counterparts**

This Guarantee may be executed in counterparts.

6.9. **Interpretation**

In this Guarantee a reference to any 'power' of BetaBoard includes a reference to any right, power, authority, discretion, remedy or privilege and a reference to any 'cost' includes a reference to any cost, expense, charge, liability or disbursement. For the avoidance of doubt, the clause titled 'Interpretation' in the Standard Terms will also apply to this Guarantee as contemplated by clause 6.7 above.

Execution

Executed as a Deed

Executed by BetaBoard:

EXECUTED as a deed by a duly authorised representative of **BUDCARL PTY LTD ACN 056 239 359 AS TRUSTEE FOR THE BETABOARD TRUST:**

Signature of Authorised Representative

Date

Name of Authorised Representative

SIGNED SEALED AND DELIVERED by

[INSERT
NAME OF GUARANTOR] in the presence of:

Signature

Signature

Name

Name of witness

Date