

# RAPID PLAS FINANCIAL GUARANTEE

This version is correct as at April 2012 (E.&O.E.)

## 1. DEFINITIONS

In this Guarantee and Indemnity the following expressions apply: "Administration" includes any administration or liquidation of a corporation, arrangement, receivership or anything similar.

- (a) "Company" means Rapid Plas Pty Limited (ACN 109 135 908) its successors, assigns, employees, servants and agents.
- (b) "Customer" means the entity to whom the Company has supplied goods, either in its own right or as agent under these terms.
- (c) "Guaranteed Moneys" means all moneys which are, will or may be at any time in the future, owing or payable to the Company by the Customer for any reason whatsoever. It includes, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Customer would have been liable but for its Administration, it will still be taken to be liable.
- (d) "Guarantor" means the person or persons signing this Guarantee and Indemnity. If there is more than one guarantor then it means those persons jointly and severally.

## 2. CONSIDERATION

In consideration of the Company agreeing to supply or continue to supply goods or give credit to the Customer, the Guarantor has agreed to enter into this Guarantee and Indemnity in favour of the Company.

## 3. GUARANTEE

The Guarantor unconditionally guarantees to the Company the due and punctual payment of the Guaranteed Moneys and agrees:

- (a) that on demand from time to time to pay an amount equal to the Guaranteed Moneys then due and payable;
- (b) any statement signed by a secretary, director or authorised representative of the Company showing the amount of Guaranteed Moneys or the money owing by the Guarantor under this Guarantee shall, in the absence of manifest fraud or error, be binding and conclusive on and against the Guarantor; and
- (c) this Guarantee is a continuing Guarantee and shall remain in full force and effect until all the Guaranteed Moneys are paid or satisfied in full and is in addition to, and shall not be prejudiced or affected by any other security or guarantee held by the Company for the payment of the Guaranteed Moneys;
- (d) the liabilities of the Guarantor and the rights of the Company under this Guarantee are not affected by anything which might otherwise affect them at law or in equity;
- (e) if any payment by the Guarantor under this Guarantee or the Customer is avoided, set aside, ordered to be refunded reduced or rendered unenforceable by any laws relating to bankruptcy, insolvency or liquidation, that payment will be taken not to have been made and the Company shall be entitled to recover

from the Guarantor the value of that payment as if that payment had never been made. This clause continues after the Guarantee is discharged; and

- (f) this Guarantee shall bind the Guarantor and his or her respective personal representatives or assigns and is not affected by the death or bankruptcy of the Guarantor.

## 4. INDEMNITY

If the obligation of the Customer to pay the Guaranteed Moneys to the Company is unenforceable for any reason, the Guarantor as a separate undertaking unconditionally and irrevocably indemnifies the Company against any loss that Company suffers as a result.

## 5. NATURE AND PRESERVATION

- (a) The liability of the Guarantor under this Guarantee is absolute and is not subject to the performance of any condition precedent or subsequent.
- (b) The liability of the Guarantor will not be affected by any act, omission, matter or thing, which might release or discharge the Guarantor from that liability including any of the following:
  - (i) any act or payment which would otherwise form part of payment of the Guaranteed Moneys being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrevocable in whole or in part for any reason;
  - (ii) the Company granting time, waiver or other concession to the Guarantor or any third party in respect of the Guaranteed Moneys;
  - (iii) any variation to any obligation under the Guarantee whether or not the variation is substantial or material or imposes an additional liability on or disadvantages the Guarantor;
  - (iv) the release of any property from any encumbrance which the Company holds over it, or the substitution of property in place of any other property subject to any encumbrance held by the Company; or
  - (v) the transfer, assignment or novation by the Company or the Guarantor of all or any of its rights or obligations under the Guarantee.

## 6. SET-OFF

The Guarantor's liability under this Guarantee will not be reduced by any defence, set-off or counterclaim available to the Guarantor against the Company.

## 7. WAIVER

No failure or delay by the Company to exercise any power, right or remedy under this Guarantee shall operate as waiver, nor shall any single or partial exercise of any power, right or remedy preclude any other or further exercise of that power, right or remedy. The rights and remedies under this Guarantee are cumulative to any rights and remedies arising at law.

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## 8. CLAIM IN ADMINISTRATION

Until this Guarantee is released by the Company, the Guarantor will not without the Company's consent prove in competition with the Company if the Customer goes into Administration.

## 9. APPLICATION OF MONEY RECEIVED

If the Company receives or recovers money in respect of debts of a Customer the Company may use it to pay off whichever part of those debts it chooses and does not have to apply the payment for the Guarantor's benefit.

## 10. SECURITY FOR PAYMENT / CHARGE CLAUSE

The Guarantor as beneficial owner hereby charges all freehold and leasehold interests in land which the Guarantor now owns or may acquire hereafter with the payment of the Guaranteed Moneys and the Guarantor further consents to the Company registering a caveat to protect its interests under this clause.

## 11. EFFECTIVE LAW

All laws which limit the Company's power or require notices to be given are excluded as far as possible. If part of this Guarantee is prohibited or unenforceable, it will not affect the remaining parts.

## 12. TRUSTEE

This document will bind the Guarantor both personally and as trustee of any trust of which the Guarantor is a trustee if the Guarantor signs as trustee of that trust.

## 13. EXPENSES

The Guarantor shall pay to the Company all costs, charges and expenses incurred by the Company in connection with exercise or attempted exercise of any power, right or remedy under this Guarantee or the failure of the Guarantor to comply with his obligations under this Guarantee (including legal fees, stamp duty, and other government duties and charges).

## 14. SECTION 18K(1)(C) PRIVACY ACT 1988

The Guarantor agrees that the Company may seek from a credit reporting agency a credit report containing personal information about the Guarantor to assess whether to accept the Guarantor as a guarantor for credit applied for or provided to the Customer.

The Guarantor agrees that if the Company approves the Customer's application for credit this agreement remains in force until the credit facility covered by the Customer's application ceases.

## 15. AGREEMENT THAT RAPID PLAS PTY LIMITED MAY USE A CREDIT REPORT ABOUT THE GUARANTOR FOR COLLECTING OVERDUE PAYMENTS (SECTION 18K(1)(H) PRIVACY ACT 1988)

If the Company considers it relevant to collecting overdue payments in respect of commercial credit provided to the Guarantor, the Guarantor agrees to the Company receiving from a credit reporting agency a credit report containing personal information about the Guarantor in relation to collecting overdue payments.

## 16. AGREEMENT TO RAPID PLAS PTY LIMITED SEEKING FROM OR GIVING TO OTHER CREDIT PROVIDERS DETAILS ABOUT THE GUARANTOR'S WORTHINESS (SECTION 18N(1)(B) PRIVACY ACT 1988)

The Guarantor agrees that the Company may give to and seek from other credit providers named in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency information about the Guarantor's credit arrangements. The Guarantor understands that this information may include any information about the Guarantor's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

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SIGNATURE OF GUARANTOR

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PRINT FULL NAME OF GUARANTOR IN BLOCK LETTERS

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DATE OF AGREEMENT

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