



BGC CREDIT APPLICATION FORM

PLEASE SEEK LEGAL ADVICE PRIOR TO EXECUTING THESE DOCUMENTS.

BGC Sales Representative

THESE CONDITIONS MUST BE READ TOGETHER WITH ANY BGC ENTITY'S TERMS AND CONDITIONS IN PLACE AT THE TIME AN ORDER IS PLACED FOR ANY GOODS AND SERVICES. A COPY OF THE RELEVANT TERMS AND CONDITIONS ARE AVAILABLE ON REQUEST OR AT WWW.BGC.COM.AU OR THE RELEVANT BGC ENTITY'S WEBSITE

Please ensure that both the Application and Guarantee have been completed and then send all original signed and witnessed documents to the above postal address or creditapplications@bgc.com.au

1. ENTITY NAME ("the Applicant"): ABN:

2. TRADING DETAILS

(i) Registered Business Name (trading as):

(ii) Type of Business:

3. TRUST AND TRUSTEE DETAILS (if applicable)

Does the Applicant act as a Trustee for a Trust? If so, please complete the details below.

(i) Name of Trust:

(ii) Type of Trust: (Discretionary Family Trust / Unit Trust)

4. BILLING INFORMATION

(i) Business Address: Postcode:

(ii) Postal Address: Postcode:

(iii) Phone No: Fax No: Mobile No:

(iv) Email address for billing:

(v) Accounts Contact: Phone No:

5. PROPRIETORS' FULL NAMES AND ADDRESSES

	Note: Names of directors (if the Applicant is a company), partners, trustees or other proprietors	Residential address	Date of birth (dd/mm/yyyy)
1			
2			
3			
4			

6. HAVE ANY OF THE PERSONS REFERRED TO IN SECTION 5. ABOVE:

(i) Had any of their property or assets attached as a result of a court order, had bankruptcy proceedings instituted against them, or entered into bankruptcy voluntarily? YES NO

(ii) Been refused credit, either individually or as a director or shareholder of a company? YES NO

7. LAND OWNED BY THE APPLICANT

	Address of Real Property	Current Value (\$)	Value of Encumbrances (\$)
1			
2			
3			
4			

8. STATEMENT OF APPLICANT'S ASSETS AND LIABILITIES

Attach a copy of your current Balance Sheet and Profit & Loss Statement

or

Appointed Contact for Financial Statements

Phone No.

9. ANTICIPATED CREDIT REQUESTED (enter the estimated amount sought over a (2) month period)

Affinity Windows:	\$	Asphalt:	\$	Brikmakers:	\$
Builders Supplies:	\$	Cement:	\$	Concrete:	\$
Fibre Cement:	\$	Harmony Roof Tiles:	\$	Insulation:	\$
Metal Roofing:	\$	Plasterboard:	\$	Precast:	\$
Quarries:	\$	Steel:	\$	Other Division: (please specify):	\$
TOTAL ESTIMATE FOR 2 MONTHS TRADING					\$

1. DEFINITIONS

The definitions in the Schedule apply to these Conditions.

2. ACCEPTANCE OF THE APPLICATION

- 2.1 The Application may be accepted by any BGC Entity supplying Goods or providing Services to the Applicant on deferred payment terms after the date of the Application.
- 2.2 Subject to Condition 7.2 and 3, on and after acceptance of the Application, these Conditions apply to all transactions for the supply of Goods or the provision of Services between BGC and the Applicant on deferred payment terms.
- 2.3 BGC is not required to provide Goods or supply Services other than in accordance with the Agreement.
- 2.4 The Applicant and each person signing the Application authorises BGC to:
 - (a) use, disclose, exchange, or obtain credit information about its personal or commercial credit worthiness from any referee disclosed in this document, other credit provider, or any credit reporting agency for the purpose of assessing this Application for credit, or in connection with any guarantee associated with the Application; and
 - (b) disclose the contents of any credit report on the Applicant to BGC's solicitors, mercantile agents, or other advisers for the purpose of enforcing the Agreement, or any guarantee associated with the Application.

BGC complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals. BGC's privacy policy can be found at http://www.bgc.com.au/s_11/11_privacy_pol.html.

3. CREDIT

The Applicant acknowledges that BGC is not obliged to supply Goods or provide Services on credit. The Applicant is liable to pay BGC for all Goods Delivered and all Services performed (including the partial performance of any Services) in accordance with Condition 4.

4. PAYMENT OF AMOUNTS OWING

- 4.1 Each BGC Entity that supplies Goods or provides Services to the Applicant in any month will provide the Applicant with a monthly statement in the subsequent month (a "Statement") which sets out the Account Balance.
- 4.2 The Account Balance must be paid on the last day of the month in which a Statement is provided, or on any later date specified in the Statement ("Due Date").
- 4.3 Time is of the essence for the payment of any Account Balance by the Due Date.
- 4.4 **Interest accrues on any amount not paid by the Due Date at a rate of 12% per annum or any rate specified in a relevant judgement (both before and after judgement), calculated on a daily basis from the Due Date to the date of payment of the outstanding amount.**

5. PASSING OF RISK

Unless otherwise provided in the Relevant BGC Entity's standard terms and conditions for the relevant supply, the Goods are at the Applicant's risk upon Delivery.

6. PASSING OF PROPERTY

- 6.1 Unless otherwise provided in the Relevant BGC's Entity's standard terms and conditions for the relevant supply, BGC remains owner of the Goods until the Applicant has paid in full the price of the Goods. BGC has the right to register its ownership interest in all Goods and New Goods as a security interest under the PPSA. The Applicant must do anything, including providing information which BGC requires to enable BGC to register and maintain its security interest. The Applicant and BGC agree that:
 - (a) BGC's interest in the Goods and New Goods is a purchase moneys security interest for the purpose of the PPSA;
 - (b) BGC's interest in the Goods and New Goods extends to the Proceeds of the Goods and New Goods; and

- (c) the subject matter referred to in section 275(1) of the PPSA is confidential; and
- (d) the Applicant waives the right to receive a verification statement in relation to any such registration.
- 6.2 The following provisions of the PPSA do not apply and, for the purposes of section 115 are "contracted out" of the Agreement, sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 6.3 The parties agree that BGC has the power to retain, deal with or dispose of any property seized by it in the manner specified in sections 123, 125, 126, 128, 129 and 134(1) of the PPSA and in any other method permitted by law.
- 6.4 Upon Delivery:
- (a) the Applicant must store the Goods separately from property belonging to the Applicant or any other person and in a manner which identifies them as the property of BGC; and
- (b) if the Applicant:
- (i) makes, produces or manufactures a new object from the Goods whether finished or not;
- (ii) mixes the Goods with other goods; or
- (iii) allows the Goods to become part of other goods, (the "New Goods"), BGC's ownership interest of the Goods immediately becomes an interest in the New Goods in accordance with Part 3.4 of the PPSA unless the New Goods are part of a building, whether completed or under construction.
- 6.5 If the Applicant sells the Goods or the New Goods before it has paid in full for them, it acquires ownership of the Goods immediately before the sale and until BGC recovers any amounts owed to BGC in full
- (a) BGC's security interest attaches to the Proceeds;
- (b) the Applicant holds the whole of the Proceeds on trust for BGC; and
- (c) where the Applicant is not paid, the Applicant must assign its claim for payment, in respect of the sale of the Goods or the New Goods, to BGC if BGC requests the Applicant to do so.
- 6.6 The Applicant irrevocably authorises BGC and any of its employees or agents, to enter upon any premises occupied by the Applicant, the Applicant's employees or agents or where the Goods may be in order to retake possession of any Goods for which any Account Balance has not been paid to BGC. The Applicant must pay all reasonable costs and expenses of cartage, or otherwise incurred by BGC in taking possession, on demand from BGC.
- 6.7 Any exercise of BGC's rights in accordance with Conditions 6.5 or 6.6 will not release the Applicant from any liability or obligation it may have in respect of the Agreement and the Applicant will continue to be liable for any amount owed under the Agreement less any amount actually received or recovered by BGC.
- ## 7. EXCLUSION
- 7.1 Unless otherwise provided in the Relevant BGC Entity's standard terms and conditions:
- (a) To the greatest extent that they are capable of being excluded, any warranties or guarantees established by legislation or common law or equity and deemed to form part of the Agreement or any other agreement, arrangement or transaction between BGC and the Applicant are hereby excluded.
- (b) Subject to the provisions of any statutory condition or warranty which cannot legally be excluded, neither party is liable to the other for any Consequential Loss suffered by them arising out of or in consequence of any fault or defect in the Goods or Services or any alleged breach of the Agreement or any other agreement, arrangement or transaction between BGC and the Applicant.
- 7.2 **In addition to this Agreement, each supply of Goods and Services is subject to the Relevant BGC Entity's standard terms and conditions applying to the relevant supply as at the time any order is placed for that particular supply. A copy of the Relevant BGC Entity's terms and conditions in place at the time the order is placed will be available on request or at www.bgc.com.au or on the Relevant BGC entity's website. If there is any inconsistency between those terms and conditions and this Agreement, this Agreement shall prevail except where this Agreement provides otherwise.**
- ## 8. DEFAULT
- 8.1 It is an Event of Default if any of the following occur:
- (a) the Applicant fails to pay any Account Balance by the relevant Due Date;
- (b) the Applicant materially breaches any of its other obligations to BGC under the Agreement or any other agreement, arrangement or transaction between BGC and the Applicant and does not remedy the default or breach within five (5) Business Days of receiving notice of such breach from BGC;
- (c) a judgement, order or encumbrance is enforced, or becomes enforceable upon any of the Applicant's property;
- (d) an Insolvency Event occurs;
- (e) a Change of Control occurs;
- (f) the Applicant or any of the Applicant's assets become subject to any receivership or external administration under the Corporations Act; or
- (g) a change occurs in a circumstance which is represented under the Agreement to exist which in the reasonable opinion of the Authorised Representative may have a material adverse effect on the Applicant's ability to observe and perform the Applicant's obligations under the Agreement.
- 8.2 If an Event of Default occurs, then all amounts owed to BGC pursuant to the Agreement become immediately due and payable, and BGC may without prejudice to any other rights or remedies which it might have, immediately suspend or cancel the supply of Goods or provision of Services to the Applicant with immediate effect, or immediately terminate the Agreement.
- 8.3 The Applicant must notify the Authorised Representative as soon as practicable after it becomes aware that an Event of Default has occurred.
- ## 9. REPRESENTATIONS
- The Applicant, warrants to BGC at the time of the Application and again on each occasion that the Applicant orders Goods and/or Services from BGC pursuant to the Agreement and upon Delivery that:
- (a) the information which the Applicant has provided to BGC in and in connection with the Agreement is materially correct, complete, up to date and not materially misleading, and acknowledges that BGC has relied upon that information in determining whether or not to accept the Application, and the extent to which BGC will supply Goods or provide Services to the Applicant;
- (b) where the Applicant is a corporation, that:
- (i) it is registered (or taken to be registered) and validly existing under the Corporations Act; and
- (ii) it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) the Applicant has power and authority to enter into and perform its obligations under, and has taken all necessary action to authorise its execution, delivery and performance of, the Agreement;
- (d) the Agreement creates legal, valid and binding obligations on the Applicant and is enforceable in accordance with its terms;
- (e) the Applicant's execution, delivery and performance of the Agreement does not and will not breach any law, authorisation, judgment, award, rule, policy, constitution or contractual obligation binding on it and will not result in the creation or imposition of a security interest on any of its assets;
- (f) Prior to placing any order for Goods or Services, the Applicant has visited www.bgc.com.au, or requested the relevant terms from the Relevant BGC Entity, or located the relevant terms on the Relevant BGC Entity's website, and read the Relevant BGC Entity's terms and conditions applying to the relevant supply in addition to these Conditions, and agrees to be bound by those terms and conditions;
- (g) if the Applicant is at any time acting in the capacity of trustee of any trust ("Trust") whether or not BGC has notice of the Trust, the Applicant covenants that:
- (i) the Applicant is liable for the performance of all covenants contained in the Agreement in its own right and in its capacity as trustee;
- (ii) the Applicant is entering into this Agreement for the benefit of the Trust, has full power and authority pursuant to the Trust deed to enter into the Agreement, and the provisions of the Trust deed do not purport to exclude or limit the right of indemnity of the Applicant against the Trust or the trust fund; and
- (iii) BGC's right of recourse under the Agreement is not limited to the Applicant's assets but extends to the assets of any Trust;
- (h) no Event of Default has occurred; and
- (i) the Applicant enters into the Agreement and places orders for Goods or Services for the purpose of its ordinary business and its commercial benefit and not for personal, domestic or household use or consumption.

10. COSTS

If an Event of Default occurs then in addition to any other right or remedy of BGC, the Applicant must pay all of the costs and expenses which BGC reasonably incurs in connection with that Event of Default on demand, including all debt collection fees, cartage, commissions, and legal expenses on a solicitor own client or full indemnity basis, whichever is higher.

11. CHARGE

The Applicant hereby charges in favour of BGC all land owned or in the future acquired by the Applicant to secure payment of all amounts which are, or may become owing under the Agreement or any other agreement, arrangement or transaction between BGC and the Applicant and irrevocably consents to BGC registering an absolute caveat (or the equivalent in any relevant jurisdiction or which may exist from time to time) at any time in respect of such land to protect its charge, and will do all things necessary to ensure that such registration is properly effected.

12. SET-OFF

- a) The Applicant agrees to make payments due to BGC in full without set-off or counterclaim, and without any deduction in respect of taxes unless required by law, in Australian dollars, in immediately available funds.
- b) The Applicant agrees and irrevocably authorises BGC to set-off any amounts which may be owing by the Applicant to any BGC Entity against any amount which may be owing to the Applicant by BGC.

13. GENERAL

- 13.1 Subject to Conditions 7.2 and 9, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect. Any subsequent agreement, arrangement or transaction between BGC and the Applicant (including any subsequent Application) does not terminate or discharge this Agreement, or any liability or obligation under this Agreement, except to the extent expressed to do so.
- 13.2 A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege. A purported waiver of any rights of any party shall not have any force or effect unless and until the same is in writing, executed by the parties or, in the case of a waiver, is executed by the party whose rights are thereby waived.
- 13.3 The Applicant must not assign or transfer to any other person any of its rights or obligations in connection with the Agreement or any other agreement, arrangement or transaction between BGC and the Applicant. BGC may assign all or part of any amounts owing to it under this Agreement, together with any part of its rights under the Agreement or any other agreement, arrangement or transaction between it and the Applicant in respect of those amounts. The Applicant must do all things, including executing documents reasonably required by BGC in relation to any assignment.

13.4 Any notice, demand, or other communication related to these Conditions may be sent to such address, facsimile number, or email address as the parties have specified in the Application or may have advised each other in writing, and will be taken to have been sent or received in accordance with any relevant law which applies to that communication.

13.5 The agreement is governed by and construed in accordance with the laws of Western Australia, and the Applicant agrees to submit to the exclusive jurisdiction of the Courts of Western Australia and the Commonwealth of Australia.

13.6 The Applicant must pay all duties, fees and expenses associated with the Application and the Agreement, and the registration of any caveats, withdrawal of caveats, security interests, and stamp duty (or similar costs and expenses), on demand by the Authorised Representative, provided that the Authorised Representative has provided details of all such duties, fees, costs and expenses to the Applicant, and these amounts have been reasonably incurred.

13.7 Any provision of the Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; or
- (b) be severed from the Agreement in any other case, without invalidating or affecting the remaining provisions of the Agreement or the validity of that provision in any other jurisdiction.

13.8 Any variation or changes to this Agreement must be:

- (a) in writing;
- (b) signed by the Authorised Representative and an authorised manager of the Applicant; and
- (c) expressly state that it is a variation to this Agreement.

The parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in this Condition do not have the authority to vary this Agreement, or to agree that this Agreement does not apply to a supply to which this Agreement would otherwise apply.

13.9 Where the Application is made by more than one person or entity, not operating as a corporation, each person or entity is jointly and severally liable under these Conditions.

13.10 The Agreement does not merge with or adversely affect, and is not adversely affected by, any other guarantee, indemnity, charge or other security, or any judgment obtained by BGC against any person in connection with the Agreement, including any Guarantor.

By signing this document:

- (a) the Applicant agrees to be bound by the Conditions if BGC accepts the Application; and
- (b) each individual executing the document on behalf of the Applicant agrees to the authorisations and permissions regarding personal information set out in Condition 2.4.

Who must sign

Unless otherwise agreed with BGC:

- (a) if the Applicant is a company – all directors of that company;
- (b) if the Applicant is a partnership – all partners of that partnership; or
- (c) if the Applicant is a sole trader – the sole trader.

Please contact BGC if you will have any difficulty in executing this Application as outlined above. BGC may rely on this Application as if it is binding and enforceable notwithstanding that it has not been executed in accordance with the above instructions.

EXECUTED FOR AND ON BEHALF OF THE APPLICANT

Signatory

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

Signatory

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

Signatory

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

Signatory

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	



DEED OF GUARANTEE AND INDEMNITY FORM

PLEASE SEEK LEGAL ADVICE PRIOR TO EXECUTING THESE DOCUMENTS.

This Guarantee must be completed and signed by:

- (a) all directors, partners or other proprietors of the Applicant; and
- (b) the husbands, wives, or de facto spouses of any directors, partners or other proprietors of the Applicant if property is jointly owned.

Each Guarantor must execute this document in the presence of an independent witness (ie not a husband, wife, de facto spouse, family member or other Guarantor).

Insert name of Applicant:

1. Name of Guarantor:

Residential address of Guarantor:

As a trustee for a Trust: YES NO Name of Trust:

2. Name of Guarantor:

Residential address of Guarantor:

As a trustee for a Trust: YES NO Name of Trust:

3. Name of Guarantor:

Residential address of Guarantor:

As a trustee for a Trust: YES NO Name of Trust:

4. Name of Guarantor:

Residential address of Guarantor:

As a trustee for a Trust: YES NO Name of Trust:

(each of the above are referred to in this Guarantee as a "Guarantor")

RECITALS

- A. The Applicant has submitted the Application to BGC seeking the supply of Goods and/or Services on credit by BGC on the terms and conditions set out in the Application.
- B. Each Guarantor, jointly and severally, provides this Guarantee in favour of BGC, guaranteeing the performance by the Applicant of the Agreement and indemnifying BGC in respect of any loss which it may suffer on the terms set out in this Guarantee.

IT IS AGREED THAT:

1. The definitions in the Schedule apply to this Guarantee.
2. Each Guarantor, jointly and severally, unconditionally guarantees the performance of the terms and conditions of the Agreement by the Applicant to BGC, including the Applicant's obligations to pay money to BGC. If on any one or more occasions the Applicant does not pay any amount to BGC when due, any Guarantor must pay that amount on demand by BGC.
3. Subject to the terms of this Guarantee, this Guarantee is irrevocable and continuing despite any intervening payment, settlement or similar event.
4. Without limiting a Guarantor's rights at law, if:
 - (a) there are no amounts for which the Applicant is, or will become liable to pay to BGC; or
 - (b) there is a Change of Control of the Applicant, a Guarantor may seek to terminate its future liability under this Guarantee by providing 30 days' notice in writing to the Authorised Representative. Any termination will only take effect from the date on which the Authorised Representative, acting reasonably, provides the Guarantor with a written acceptance of that notice. Any termination does not affect the existing liability of that Guarantor, or any rights which have accrued to BGC prior to the point at which the Guarantor's future liability under this Guarantee has been terminated.
5. The liability of each Guarantor under this Guarantee is not limited or affected, and the rights of BGC under this Guarantee remain fully enforceable, notwithstanding the occurrence of any one or more of the following circumstances:
 - (a) the granting of any indulgence or concession at any time by BGC to the Applicant;
 - (b) any variation of the Agreement, with or without any Guarantor's prior knowledge;
 - (c) any compromise, release, discharge, waiver or variation of any right by BGC;
 - (d) the fact that monies payable by the Applicant to BGC may not be recoverable or may cease to be recoverable for any reason;
 - (e) the existence now or at any future time of any legal disability in the Applicant, or any other Guarantor;
 - (f) the death of a person named as a Guarantor (in which case his or her estate shall have continuing liability under this Guarantee);
 - (g) the bankruptcy, assignment or composition entered into for the benefit of creditors, Insolvency Event, Change of Control, or any similar event occurring in respect of the Applicant, or any Guarantor;
 - (h) the fact that any other Guarantor may never execute this Guarantee or that this Guarantee is, or may become, unenforceable against any other Guarantor; or
 - (i) the fact that a Guarantor's future liability under this Guarantee has been terminated.
6. Each Guarantor must indemnify and keep indemnified BGC against all loss, costs and expenses including all debt collection fees, commissions, and legal expenses on a solicitor own client or full indemnity basis whichever is higher, incurred by BGC, in respect of:
 - (a) any material breach by the Applicant of the Agreement;
 - (b) a representation or warranty given by the Applicant or any Guarantor, in connection with the Agreement, which is incorrect or misleading when made or taken to be made; and
 - (c) any breach by the Guarantor of the terms and conditions of this Guarantee.

This indemnity is payable on demand.

7. If any payment made to BGC under the Agreement or the Guarantee is later avoided by effect of any statutory provisions or otherwise by operation of law, then BGC, the Applicant and each Guarantor are restored to the rights and liabilities which each respectively would have had if the payment had not been made.
8. Each Guarantor must inform BGC that:
 - (a) it is subject to, or considering entering into, bankruptcy, assignment or composition for the benefit of creditors, or any similar event; or
 - (b) it may undergo an Insolvency Event, Change of Control, or any similar event,

and must inform BGC as soon as reasonably possible, and in any event, prior to any of the above occurring.

9. Each Guarantor, and each person signing the Guarantee, authorises BGC to:
 - (a) use, disclose, exchange, or obtain credit information about its personal or commercial credit worthiness from any referee disclosed in the Application, other credit provider, or any credit reporting agency for the purpose of assessing the Application for credit, or in connection with this Guarantee; and
 - (b) disclose the contents of any credit report on the Applicant to BGC's solicitors, mercantile agents, or other advisers for the purpose of enforcing the Agreement, or the Guarantee.

BGC complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals. BGC's privacy policy can be found at www.bgc.com.au.

10. Each Guarantor hereby charges in favour of BGC all land owned or in the future acquired by that Guarantor to secure payment of all amounts which are, or may become owing under the Guarantee or any other agreement, arrangement or transaction between BGC and the Applicant and irrevocably consents to BGC registering an absolute caveat (or the equivalent in any relevant jurisdiction or which may exist from time to time) at any time in respect of such land to protect its charge, and will do all things necessary to ensure that such registration is properly effected.
11. BGC is not obliged to take any action against, to make demand, or to give any notice to the Applicant or any Guarantor of any default by the Applicant before claiming against any Guarantor.
12. This Guarantee binds the personal representatives, assigns, transferees, or successors of each Guarantor.
13. BGC may apply amounts it receives from any Guarantor under this Deed in any manner or order it chooses.
14. BGC may at any time assign all or any of the benefits and advantages of this Guarantee to any person as it thinks fit without prior notice to any Guarantor, provided that any such assignment will not be to the material detriment of the Guarantor.
15. Each Guarantor shall pay all duties, fees and expenses, reasonably and actually incurred, associated with the grant of this Guarantee, and the registration of any caveats, withdrawals of caveats, and stamp duty.
16. This Guarantee continues to bind each Guarantor notwithstanding any Insolvency Event, Change of Control, or changes which may from time to time take place in the composition, shareholders or partners of the Applicant, or any Guarantor.
17. BGC may at any time in its absolute discretion and without giving any notice whatsoever to any Guarantor, refuse credit, or refuse the supply of Goods and/or Services to the Applicant.
18. Any demand note or document to be served on any Guarantor may be served by delivering or posting it to that Guarantor at the address or at each address stated above provided however that the making of such a demand is not a condition precedent to any liability pursuant to this Guarantee.
19. This Guarantee shall be construed according to the laws of Western Australia, and each Guarantor agrees to submit to the exclusive jurisdiction of the courts of Western Australia.
20. Each Guarantor acknowledges that it has had full and ample opportunity prior to the execution of this Guarantee to obtain independent legal advice regarding the Agreement and this Guarantee, and has otherwise read and understood the Agreement and the Guarantee. Each Guarantor agrees to make payments under this Guarantee in full without set-off or counterclaim, and without any deduction in respect of taxes unless required by law, in Australian dollars, in immediately available funds.
21. This Guarantee does not merge with or adversely affect, and is not adversely affected by, any other guarantee, indemnity, charge or other security, or any judgment obtained by BGC against any person in connection with the Agreement, or the Guarantee, including the Applicant or any Guarantor.
22. If any Guarantor is at any time acting in the capacity of trustee of any trust ("Trust") whether or not BGC has notice of the Trust, that Guarantor covenants that:
 - (a) the Guarantor is liable for the performance of all covenants contained in this Guarantee in its own right and in its capacity as trustee;
 - (b) the Guarantor is entering into this Guarantee for the benefit of the Trust, has full power and authority pursuant to the Trust deed to enter into the Guarantee, and the provisions of the Trust deed do not purport to exclude or limit the right of indemnity of the Guarantor against the Trust or the trust fund; and
 - (c) BGC's right of recourse under this Guarantee is not limited to any Guarantor's assets but extends to the assets of any Trust.
23. Each person signing this Guarantee warrants by their execution of this document that they are duly authorised to bind themselves, or the relevant entity, to this Guarantee and that they have complied with all necessary rules and formalities prescribed by any law or other instrument.

DEED OF GUARANTEE AND INDEMNITY FORM - PAGE 3/4

IMPORTANT: In signing this document you are agreeing to become liable for any amount which may become owing to BGC by the Applicant pursuant to the Agreement. Amongst other rights BGC may seek to recover such amounts from you or take a charge over any land owned or in the future acquire by you. You should further **NOTE** that:

- Goods and Services may be provided to the Applicant on credit, and the amount owing to BGC may increase substantially, without notice to you;
- the terms of the Agreement may change at any time without notice to you;
- the guarantee you are giving may only be terminated in limited circumstances, and is otherwise irrevocable and continues despite any intervening payment, settlement or similar event; and
- if the Applicant breaches the Agreement or makes a misleading representation in connection with the Agreement, you must indemnify BGC for its loss.

This Guarantee must be completed and signed by:

- (a) all directors, partners or other proprietors of the Applicant; and
- (b) the husbands, wives, or de facto spouses of any directors, partners or other proprietors of the Applicant if property is jointly owned.

Please contact BGC if you will have any difficulty in executing this Guarantee as outlined above. BGC may rely on this Guarantee as if it is binding and enforceable notwithstanding that it has not been executed in accordance with the above instructions.

Each Guarantor must execute this document in the presence of an independent witness (ie not a husband, wife, de facto spouse, family member or other Guarantor).

**PLEASE SEEK LEGAL ADVICE PRIOR TO EXECUTING THESE DOCUMENTS.
EXECUTED AS A DEED BY**

Guarantor

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

Guarantor

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

Guarantor

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

Guarantor

Name	
Position	
Signature	
Date	

Witness

Name	
Address	
Signature	

SCHEDULE

In these Conditions, the Application, and the Guarantee:

“**Account Balance**” means the amount which is owing by the Applicant to the Relevant BGC Entity at any particular point in time.

“**Agreement**” means an agreement constituted by the acceptance of the Application by BGC, which includes the Application, the Notification and these Conditions.

“**Applicant**” means the party or parties defined as the Applicant in the Application.

“**Application**” means the Application to which these Conditions are annexed.

“**Authorised Representative**” means the person holding the title of BGC’s Credit Manager or other equivalent title from time to time or such other person as may be authorised by the Credit Manager and notified to the Applicant on request from time to time.

“**BGC**” means BGC Australia Pty Ltd, Esther Investment Pty Ltd and each subsidiary or related body corporate (as defined in the Corporations Act) of any of them including without limitation all entities listed in the BGC privacy policy located at http://www.bgc.com.au/s_11/11_privacy_pol.html, each a “**BGC Entity**”.

“**Business Day**” means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

“**Change of Control**” means any change which materially affects the management or ownership (beneficial or otherwise) of the Applicant or Guarantor (as the context requires), and includes:

- (a) where the Applicant or Guarantor is a company:
 - (i) a person or entity acquiring or disposing of more than 10% of the shares in that company; or
 - (ii) any change to the composition of the board of directors of the company;
- (b) where the Applicant or Guarantor is a partnership, any change to the composition of the partnership; or
- (c) where the Applicant or Guarantor is a sole trader, the entry into any partnership or other change in the operation of the Applicant’s or Guarantor’s business as a sole trader.

“**Conditions**” means these terms and conditions and this Schedule.

“**Consequential Loss**” means loss beyond the normal measure of direct damages and includes without limitation, indirect loss, loss of profit, loss of revenue, loss of business, loss or actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

“**Corporations Act**” means the *Corporations Act 2001 (Cth)* as amended or replaced from time to time.

“**Delivery**” means the moment in time when any Goods are physically delivered (whether by delivery to the Applicant or by collection from BGC of the Goods) into the possession of the Applicant or an agent, employee or contractor of the Applicant (or such other person as directed by the Applicant) and “**Delivered**” has a corresponding meaning.

“**Event of Default**” means any of the circumstances listed in Condition 8.1.

“**Goods**” means goods ordered by the Applicant from BGC pursuant to the Agreement.

“**Guarantee**” means the deed of guarantee and indemnity provided by the Guarantors in favour of BGC regarding the Agreement.

“**Guarantor**” means the party or parties defined as Guarantors in the beginning of the Guarantee.

“**Insolvency Event**” means the happening of any of these events in relation to the Applicant or the Guarantor (as the context requires):

- (a) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Applicant or Guarantor which is not satisfied within 7 days;
- (b) the Applicant or Guarantor suspends payment of its debts; or
- (c) the Applicant or Guarantor is unable to pay its debts as and when they fall due, goes into bankruptcy, or a controller (as that term is defined in the Corporations Act) is appointed in respect of the Applicant or Guarantor.

“**New Goods**” has the meaning given to the term in Condition 6.4.

“**PPSA**” means the Personal Properties Securities Act 2009 (Cth) as amended or replaced from time to time.

“**Privacy Act**” means the *Privacy Act 1988 (Cth)* as amended or replaced from time to time.

“**Proceeds**” has the meaning given to the term in section 31 of the PPSA.

“**Relevant BGC Entity**” means the particular BGC Entity that supplies the goods or services in relation to which credit was extended by BGC pursuant to this Agreement.

“**Services**” means services ordered by the Applicant from BGC pursuant to the Agreement.

“**Statement**” means a statement provided to the Applicant under Condition 4.1.