

# CONFIDENTIALITY AGREEMENT

**BETWEEN:** Protobuild Limited

**AND:**

**BETWEEN** Protobuild Ltd, a company incorporated in New Zealand and having its registered office at 14 Ragley Street, Titirangi, Auckland.  
("Protobuild")

**AND** (company number ), a company incorporated in New Zealand and having its registered office at , New Zealand.  
("Inventor ")

**ON THE BASIS THAT:**

- A.** The **Inventor** has conceived, and is in the process of developing, the *Invention*, which has potential commercial application.
- B.** The **Inventor** owns all of the *Intellectual Property Rights* scheduled in this agreement.
- C.** The **Inventor** has agreed to disclose the *Confidential Information* to **Protobuild** for the *Purpose*, on and subject to the terms of this Agreement.

**THE PARTIES AGREE:**

**1.0 DEFINITIONS**

**1.1.** *Confidential Information* means all transactions, records, information and materials pertaining to the business of the **Inventor** or any subsidiary or related company or any joint venture or other enterprise involving the **Inventor** or any personal information belonging to the **Inventor**, the **Inventor's** customer's or employee's or contractor's, and includes without limitation:

**1.1-1.** all information (including without limitation the *Intellectual Property Rights*) and materials relating to the *Invention*; and

**1.1-2.** commercial information relating to the business and business methods of the **Inventor**, including but not limited to trade secrets, new initiatives or improvements relating to the *Invention* developed by the **Inventor**, supplier lists, details of client relationships, pricing structures, costs and profit margins, business plans, marketing plans, promotional strategies, past or present or planned research and development, and employees' details and records; and

**1.1-3.** information which is by its nature is confidential or which the **Inventor** advises **Protobuild** is confidential.

**1.2.** The term *Confidential Information* does not extend to information which:

**1.2-1.** the parties agree in writing to exclude from the terms of this Agreement;

**1.2-2.** is at the date it is gained by **Protobuild** already properly in the possession of **Protobuild** in written form from sources other than the **Inventor**, and **Protobuild** is under no obligation of confidence with respect to that information;

- 1.2-3. becomes, after the date it is gained by **Protobuild** publicly available from sources other than **Protobuild** without fault on its part; or
- 1.2-4. is, after the date it is gained by **Protobuild**, received in good faith by **Protobuild** from a third party lawfully in possession of the information and having the right to disclose it on a non-confidential basis.
- 1.3. *Intellectual Property Rights* means the intellectual property rights in the *Invention*, including without limitation patents and patent applications, copyright, registered designs, registered and unregistered trade marks and trade names, know-how and technical information.
- 1.4. *Invention* means a striker plate marking device invented by or for the **Inventor**.
- 1.5. *Purpose* shall mean **Protobuild** evaluating the *Invention*, and reviewing its willingness to become involved in the further design or development of the *Invention*.

## 2.0 OBLIGATIONS

- 2.1. **Protobuild** will treat all *Confidential Information* in the strictest confidence regardless of whether that information was gained before or after the effective date of this Agreement. Without limitation of the foregoing obligation, subject to clause 2.2, **Protobuild** shall not, without the prior written approval of the **Inventor**:-
  - 2.1-1. disclose any *Confidential Information* to **Protobuild's** affiliates, agents, consultants, or sub licensees deemed by the **inventor** to be necessary for the *Purpose*; or
  - 2.1-2. disclose, divulge, pass on or otherwise make available directly or indirectly any *Confidential Information* to any person or organisation outside **Protobuild**; or
  - 2.1-3. disclose any *Confidential Information* to any director or employee of **Protobuild** who does not need to know that *Confidential Information* for the *Purpose*; or
  - 2.1-4. disclose any *Confidential Information* to any director or employee of **Protobuild** who does need to know that *Confidential Information* for the *Purpose* but is not legally bound by an agreement imposing terms as to confidentiality and non-use of *Confidential Information* and ownership of intellectual property at least as restrictive those imposed on **Protobuild** by this Agreement; or
  - 2.1-5. use any of the *Confidential Information* other than for the *Purpose* or otherwise in any way which is likely to be detrimental to or in conflict with the interests of the **Inventor**.
- 2.2. **Protobuild** will not be in breach of this Agreement by reason of any disclosure by **Protobuild** of *Confidential Information*:
  - 2.2-1. to governmental or other regulatory agencies that is required for the *Purpose*, provided such disclosure is only to the extent reasonably necessary;

- 2.2-2. to **Protobuild's** attorneys, independent accountants or financial advisors reasonably deemed necessary by **Protobuild** for the sole purpose of enabling such attorneys, independent accountants or financial advisors to provide advice to **Protobuild** for the *Purpose*, on the condition that such attorneys, independent accountants and financial advisors agree to be bound by the confidentiality and non-use obligations contained in this Agreement.
- 2.3. **Protobuild** will take all necessary actions to maintain the security of the *Confidential Information*, including:
- 2.3-1. securely storing the *Confidential Information* and restricting and controlling access to it;
- 2.3-2. refraining from taking any *Confidential Information* in tangible form onto the premises of any third party without prior written consent from the **Inventor**; and
- 2.3-3. protecting electronically stored *Confidential Information* using secret passwords or some other encryption method.
- 2.4. **Protobuild** will take all necessary steps to prevent its employees, directors, and any permitted third party from disclosing any of the *Confidential Information* to any other third party.
- 2.5. **Protobuild** will report to the **Inventor** any actual or presumed loss of secrecy in respect of any *Confidential Information* (including the passing of any *Confidential Information* into the public domain) as soon as possible after the same occurs or is thought to occur, including any breaches of the security measures taken pursuant to clause 2.3.
- 2.5-1. In the event of any actual, presumed or threatened breach of confidence or loss of secrecy, **Protobuild** will refrain from disclosing or using (other than for the *Purpose*) that *Confidential Information* for a further period of 30 (thirty) days from the date of notice.
- 2.6. In the event **Protobuild** is in any doubt whatsoever as to whether any information is *Confidential Information*, can be used for a particular purpose or can be disclosed to a particular third party, **Protobuild** will treat that information as *Confidential Information*, refrain from using that information for that particular purpose or disclosing that information to that particular third party, unless the **Inventor** gives explicit written consent to do otherwise.
- 2.7. **Protobuild** will, upon receipt of written notice from the **Inventor** of a perceived breach of any term of this Agreement, refrain from disclosing or using (other than for the *Purpose*) the information identified in the notice for thirty (30) days from the date of the notice.
- 3.0 **PROPRIETARY RIGHTS**
- 3.1. **Protobuild** will obtain no proprietary rights of any kind in or to the *Confidential Information*, the *Invention* or the *Intellectual Property Rights*, all of which are and shall be owned by the **Inventor**.

- 3.2. All notes, records, and other materials (including drawings, prototypes and moulds) made for the *Purpose* by either party will be the property of the **Inventor** unless either party executes a confirmatory assignment to record either parties' ownership on mutual agreement. The confirmatory assignment will be undertaken at the **Inventor's** or at **Protobuild's** own expense depending on mutually agreed ownership. At all times the **Inventor** and **Protobuild** will undertake to put in place all things necessary to ensure Paslode's ownership of Confidential Information and any Intellectual Property Rights or other rights relating to it.
- 3.3. The **Inventor** acknowledges that all rights and ownership in any discoveries, inventions, designs, results, methodologies, artistic works, literary works and all other works derived directly or indirectly from **Protobuild's** knowledge of the *Confidential Information*, or arising out of research or work performed on behalf of the **Inventor**, or for the *Purpose* by either party, are the property of **Protobuild**, and **Protobuild** undertakes to do (at **Protobuild 's** expense) all things necessary to ensure **Protobuild 's** ownership of such intellectual property and any rights relating thereto.

#### 4.0 RETURN OF CONFIDENTIAL INFORMATION

- 4.1. At any time upon the written request of the **Inventor**, **Protobuild** will immediately return to the **Inventor** all tangible forms of the *Confidential Information* and materials incorporating information relating to or derived from the *Confidential Information* in **Protobuild's** possession or control, without making or retaining any copy, and all work for the *Purpose* shall immediately cease.

#### 5.0 TERM

- 5.1. The obligations of confidentiality imposed on **Protobuild** under this Agreement will endure until all of the *Confidential Information* gained by **Protobuild** lawfully enters the public domain.
- 5.2. For the purposes of clause 5.1 and clause 1.2-3 information will not be considered in the public domain or publicly available if:
- 5.2-1. the information is contained in a series of relatively unconnected information sources which may be fit together to match the *Confidential Information* and **Protobuild** used the *Confidential Information* to guide it in reviewing and selecting such sources of information; or
  - 5.2-2. the information is disclosed in confidence to a government or other regulatory authority for the purpose of registration or regulatory approval.

#### 6.0 METHOD OF DISCLOSURE

- 6.1. The obligations in this Agreement will apply irrespective of the method by which *Confidential Information* is disclosed or learnt, whether in writing, orally, by demonstration, description, inspection or otherwise.

## 7.0 NO WARRANTY

7.1. The **Inventor** acknowledges that any *Confidential Information* provided to **Protobuild** under this Agreement is provided solely for the *Purpose*, and **Protobuild** agrees that:

7.1-1. **Protobuild** is responsible for **Protobuild's** own assessment of the *Confidential Information*;

7.1-2. **Protobuild** makes no warranty as to the accuracy, adequacy or completeness of the *Confidential Information* in relation to the *Purpose* or otherwise; and

7.1-3. nothing in this Agreement implies any commitment by **Protobuild** to enter into any further or substantive agreement or undertaking with the **Inventor** or in relation to the *Purpose*.

7.2. The **Inventor** acknowledges and agrees that **Protobuild** is not liable for any claims, action or demands arising from **Protobuild's** use of the *Confidential Information*.

## 8.0 ASSIGNMENT

8.1. The **Inventor** may not assign this Agreement or all or any part of its rights or obligations under this Agreement to any third party, without the prior written consent of **Protobuild**.

## 9.0 BINDING ON PARTIES

9.1. This Agreement will enure to the benefit of and be binding upon the parties, their respective subsidiaries, successors and permitted assigns.

## 10.0 COUNTERPARTS

10.1. This Agreement may be executed in original form and/or by facsimile transmission in any number of counterparts and all counterparts taken together shall constitute one and the same instrument.

## 11.0 LAW

11.1. This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## 12.0 SEVERABILITY

12.1. In the event that any of the terms, conditions or provisions in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be read down or restricted so as to make it valid, lawful or enforceable, or if that is not possible, shall to that extent be severed from the remaining terms, conditions or provisions, which shall continue to be valid to the fullest extent permitted by law.

Signed for and on behalf of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2012 by its duly authorised officers

(i) \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Position

(ii) \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Position

Witnessed by:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Occupation

Signed for and on behalf of **Protobuild Limited** this \_\_\_\_\_ day of \_\_\_\_\_ 2012 by

(i) \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Position

(ii) \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Position

Witnessed by:

\_\_\_\_\_  
Signature  
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Name  
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Address  
\_\_\_\_\_  
Occupation

Schedule 1 – The **Inventor's** scheduled ownership of Intellectual Properties

Item 1