TERMS AND CONDITIONS OF SALE

1. **Definitions**

In these terms and conditions:

(a) **ACL** means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

(b) **Customer**, **you** and **your** refers to the customer described in the Seller's quotation or invoice;

(c) **EXW** means 'Ex Works' as defined under the Incoterms published by the International Chamber of Commerce and applying at the date of sale;

(d) **Goods** means goods ordered by the Customer and/or delivered to the Customer by the Seller;

(e) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and **Personal Property Securities Register**, **Purchase Money Security Interest**, **Security Agreement** and **Security Interest** have the meanings given to those terms in the PPSA;

(f) **Price** means the price for the Goods and/or Services.

(g) **Seller**, **We**, **Us** and **Our** refers to Weldpoly Pty Ltd ACN 680 352 185;

(h) **Services** means services ordered by the Customer and/or delivered to the Customer by the Seller; and

(i) **Terms** means these terms and conditions.

2. **Orders and Acceptance**

2.1. By submitting an order for Goods and/or Services, the Customer agrees to adhere to these Terms. These Terms and an order form a contract between the Seller and the Customer. The only terms which are binding upon the Seller are those set out in these Terms or otherwise agreed to in writing by the Seller, and those (if any) which are imposed by law and which cannot be excluded.

2.2. The Seller may accept or reject in its absolute discretion any orders which it may receive. If an order is cancelled by the Customer, the Customer must reimburse the Seller for the Seller's reasonable costs and losses incurred.

3. **Price and Payment**

3.1. The Price will be as set out in the relevant quotation, or, if no price is specified in a quotation, calculated by reference to the Seller's then applicable price list. GST and other taxes and duties that may be applicable will be added to the Price (except if expressly included in the Price).

3.2. The Seller may:

(a) change the prices on its price list from time to time and for any reason (and the updated Prices will apply to all orders after the date of change); and/or

(b) change the total Price if the Customer varies a quotation or an order.

3.3. Payment terms are cash on order unless the Seller has agreed in writing to provide credit to the Customer in which case clause 4 applies. The Seller does not waive its right to receive cash on order even if it supplies Goods or Services before payment has been made.

3.4. If the Customer defaults in making payment to the Seller either under clause 3 or 4 the Seller may in its absolute discretion charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 18% per annum (accruing daily) from the due date for payment, and the Customer indemnifies the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).

3.5. The Seller may apply the Customer's payments in any order it sees fit and may, without limitation, apply amounts towards enforcement and collection costs, legal fees and interest payments before principal, and then first in respect of Goods which have passed out of the possession of the Customer.

4. **Credit**

4.1. If the Seller agrees in writing to supply Goods or Services on credit to a Customer:

(a) the Seller will invoice the Customer for Goods and Services on delivery and, unless otherwise agreed in writing by the Seller, payment must be made within 30 days of the date of invoice;

(b) payment must be made by way of electronic funds transfer to the Seller's bank account as specified on the invoice;

(c) the Seller may without notice or cause terminate any Customer's credit arrangement; and

(d) the Seller may at any time request such security or additional security as the Seller in its discretion requires and may withhold the supply of any Goods and/or Services and/or terminate any existing credit arrangements until the additional security is given in a form satisfactory to the Seller.

5. **Delivery**

5.1. Unless otherwise specified in writing, delivery is EXW at the Seller's store as specified on the invoice. Any and all fees, charges and penalties (including any detention or demurrage charges or government charges or fees) incurred in respect of the time after delivery occurs are the responsibility of the Customer and the Customer indemnifies the Seller against all such fees, charges and penalties.

5.2. If a delivery date is specified that date is an estimate only and the Seller is not liable for any loss, damage or delay occasioned to the Customer or any other person arising from late or non-delivery or late installation of the Goods.

5.3. If the Seller is unable to supply the Customer's total order these Terms continue to apply to the Goods and/or Services supplied.

6. **Title and Risk**

6.1. Goods supplied by the Seller to the Customer are at the Customer's risk immediately on delivery to the Customer or into the Customer's custody (whichever is the sooner). The Customer must insure the goods at its cost from delivery of the Goods until they are paid for in full, against such risks as are reasonably appropriate and must note the interest of the Seller on the policy and produce a certificate to this effect to the Seller on request.

6.2. Title in Goods supplied by the Seller to the Customer does not pass to the Customer until those Goods have been paid for in full.

6.3. Until the Goods have been paid for in full:

(a) the Customer must store the Goods in such manner as to show clearly that they are the property of the Seller; and

(b) any item or product which accedes to any of the Goods by an act of the Customer or any other person at the Customer's direction or request becomes and remains the property of the Seller.

6.4. The Customer irrevocably authorises the Seller at any time, to enter any premises:

(a) upon which the Seller's Goods are stored to enable the Seller to inspect the Goods and/or if the Customer has breached these Terms, to reclaim possession of the Goods; and

(b) on which Customer records relating to the Goods are held to inspect and copy the records.

6.5. The Seller's property in the Goods is not affected by the fact that the Goods become fixtures attached to premises of the Customer or a third party, or added to any item or product, and if the Seller enters those premises for the purpose of reclaiming possession of the goods, and incurs any liability to any person in connection with the entry, the Customer indemnifies the Seller against that liability.

7. PPSR

7.1. The Customer acknowledges and agrees that these Terms comprise a Security Agreement for the purposes of the PPSA, and that until such time as we receive full payment in cleared funds for all Goods, these Terms create a Purchase Moneys Security Interest in the Goods as security for your obligations to us and the Purchase Moneys Security Interest is registrable on the Personal Property Securities Register.

7.2. The Customer:

(a) will sign and deliver any documents the Seller requires to ensure that the Seller has a perfected first-ranking Security Interest in the Goods under the PPSA;

(b) indemnifies the Seller against any costs incurred by us in registering or maintaining our Security Interest in the Goods and in exercising any of our rights under the PPSA;

(c) waives its right to receive a verification statement under section 157 of the PPSA; and

(d) in respect of Goods which are collateral to which section 115 of the PPSA applies, waives its rights under each section of the PPSA referred to in section 115.

7.3. Where the Seller supplies Goods outside Australia, the Customer acknowledges that clause 7 applies to the fullest extent possible, but with references to the PPSA and terms defined in the PPSA referring instead to the relevant laws of any applicable jurisdiction which are analogous to or have a substantially similar effect to the PPSA.

8. Intellectual Property

The Customer does not acquire any intellectual property rights in any drawings, technical data or information that may have been made available to it. The Seller remains the exclusive owner of any intellectual or industrial property rights relating to the Goods.

9. Breach

9.1. It is a breach of these Terms if:

(a) the Customer fails to pay any amount to the Seller when due;

(b) an application or order is made to or by a court or a resolution is passed for the winding up of the Customer or notice of intention to propose such a resolution is given;

(c) a controller (as defined in section 9 of the *Corporations Act 2001*) or an administrator under Part 5.3A of the *Corporations Act 2001* is appointed in respect of the Customer, or the whole or any part of its undertaking or property;

(d) there is a change in ownership or control over the Customer without the Seller's prior written consent; or

(e) anything analogous or having a substantially similar effect to any of these events happens under a law that applies to the Customer.

9.2. If a breach occurs, the Seller may (without prejudice to any other rights the Seller may have):

(a) suspend or terminate the supply of Goods and/or Services to the Customer and cease the performance of its obligations under these Terms without liability to the Customer for any loss or damage suffered by the Customer; and/or

(b) cancel all or any part of any order of the Customer which remains unfulfilled; and

(c) demand that all amounts owing to the Seller, whether or not due, are immediately payable.

10. **Warranties and Australian Consumer Law**

10.1. The only conditions and warranties which are binding on the Seller in respect of:

(a) the state, quality or condition of the Goods supplied by it to the Customer; and/or

(b) advice, recommendation(s), information or Services supplied by it, its employees, contractors or agents to the Customer regarding the goods, their use and application;

is the limited express warranty set out in clause 10.2 and those imposed and required to be binding by statute (including under the ACL).

10.2. The Seller warrants that Goods manufactured by it will be free of defects in workmanship and materials under normal use and service for a period of 24 months after delivery to the Customer for Goods supplied in Australia, or 12 months after delivery to the Customer for Goods supplied outside Australia (or such longer period as the Seller provides in writing) (**Warranty**). This Warranty does not apply to defects caused by improper installation, misuse, modification or lack of routine maintenance, normal wear and tear, or failure to adhere to the operating manual provided with the Goods. The Seller does not warrant the performance of any plant or the result of any process of which the Goods form part or in which the Goods are used. The Seller's liability under this clause is limited in accordance with clauses 10.1 and 10.4.

10.3. If the Goods are not manufactured by the Seller, the Seller will assign to the Customer the benefit of any warranty or entitlement to the goods that the manufacturer has given to the Seller, to the extent that the benefit of any warranty or entitlement is assignable.

10.4. To the greatest extent permitted by law and subject to the Warranty, the Seller will not be liable for any loss, damage, cost, injury, harm and expense of any kind (including without limitation, consequential loss) arising from the use or supply of the Goods by or to the Customer. The Customer agrees to exclude all warranties implied by law which may lawfully be excluded.

10.5. The Seller accepts, to the extent set out in this document, liability for all warranties implied under the ACL or under any other legislation the effect of which cannot be lawfully excluded. All warranties and conditions that are capable of exclusion (other than those expressly contained in this document) are expressly excluded.

10.6. To claim under the Warranty, the Customer must contact the Seller (details below) and provide proof of purchase of the Goods, together with the following information:

(a) the date on which the Goods were delivered;

(b) details of the defect or failure in respect of which the claim under the Warranty is made (including photographs of the defective Goods); and

(c) reasons why the Customer believes it is entitled to claim under the Warranty.

To: Weldpoly Pty Ltd
Address: PO Box 436, Agnes Water QLD 4677, Australia
Phone: +61 (0)7 4145 4465
Email: sales@weldpoly.com

The Seller may require the Customer to return the Goods, may send a representative to inspect the Goods at the Customer's premises.

10.7. If the Warranty does apply to the Goods the subject of a claim and the defect or failure does not amount to a major failure for the purposes of the ACL, or if the ACL does not apply, the Seller will provide, at the Seller's option, a repair or replacement of the Goods, or refund of the purchase price paid for, the Goods. If the Goods are no longer available and cannot be repaired, the Seller may, in its absolute discretion, replace the Goods with comparable substitute goods. Any repairs under the Warranty do not extend the warranty period or begin a new warranty period. The Warranty on replacement parts ends with the initial Warranty.

10.8. All reasonable costs and expenses relating to the processing of the Warranty claim shall be borne by the Customer. If the Warranty applies, the Seller will deliver the replacement Goods (or relevant part of the Goods) at the Seller's cost . The Seller will either attend the Customer's premises to repair or replace the Goods (or part), or provide reasonable support and assistance to have the Goods (or part) repaired or fitted (but will not cover the cost of fitting).

10.9. If the Seller delivers replacement Goods (or parts) to a Customer prior to receiving all information required under clause 10.6, and subsequently determines that the Warranty does not apply, the Seller will invoice the Customer for the replacement Goods (or parts).

10.10. If the Seller supplies a Customer with Goods or Services which are ordinarily acquired for personal, domestic or household use or consumption (**PDH Goods or Services**), or which are not PDH Goods or Services but cost no more than $40,000, our Goods and Services come with guarantees that cannot be excluded under the ACL. For major failures with the Services, you are entitled to cancel your service contract with us, and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with Goods or Services does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Services and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services.

10.11. While the Warranty applies to the original Customer only, subsequent purchasers may have rights under the ACL.

10.12. The benefits to the Customer given by the Warranty are in addition to all rights and remedies conveyed by the Competition and Consumer Act 2010 (Commonwealth) and any other statutory rights to which the Customer may already be entitled, and this Warranty does not exclude, restrict or modify any such rights or remedies implied by law.

11. Trust

If the Customer is a trustee, the Customer:

(a) agrees that the assets of the trust and also those beneficially held by the trustee on its own behalf will be available to satisfy the Customer's obligation under these Terms; and

(b) agrees that the Seller may have recourse to any property or funds of the Customer in any order without any obligation to marshall assets and securities and the Seller need not first seek recovery against trust assets.

12. General

12.1. **Force majeure:** The obligations of the Seller are suspended, and the Seller is not liable for a failure to perform any of its obligations, during the time and to the extent that the Seller is prevented from

complying with them by the occurrence of any event beyond the Seller's reasonable control.

12.2. **Jurisdiction:** These Terms are governed in all respects by the law of Queensland, Australia and the parties submit to the jurisdiction of the courts of Queensland and the Commonwealth of Australia.

12.3. **Severability:** If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

12.4. **No Set-off:** The Customer is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

12.5. **Assignment and Subcontracting:** The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Customer may not deal with its rights or obligations under these Terms without the Seller's consent.

12.6. **Variation:** The Seller may vary these Terms at any time by written notice to the Customer. The Terms as varied will apply to all orders after the date of such notice.

12.7. **Waiver:** The failure by the Seller to enforce any provision of these Terms will not be treated as a waiver of that provision, nor will it affect the Seller's right to subsequently enforce that provision.

12.8. **Time of the Essence:** Time is of the essence in respect of the Customer's obligation to make payment under these Terms.

GUARANTEE AND INDEMNITY

I/We

……	…….
(Name of Guarantor)	(Name of Guarantor)
……	…….
……	…….
(Address of Guarantor)	(Address of Guarantor)

(**Guarantor**)

have requested Weldpoly Pty Ltd ACN 680 352 185 (**Seller**) to supply to:

…….. (**Customer**) (insert name and ACN of customer)

goods or services on credit and the Seller agrees to do so in consideration of this guarantee and indemnity.

1. The Guarantor jointly and severally guarantees to the Seller prompt payment of all money now payable and which becomes payable by the Customer to the Seller (**Guaranteed Money**). The Seller may recover the Guaranteed Money from the Guarantor as a liquidated debt.

2. If the Customer is not bound by some or all of its obligations to the Seller under the terms of supply, the Guarantor agrees, by way of indemnity and principal obligation, to pay to the Seller the amount which would have been payable by the Guarantor to the Seller under the guarantee in clause 1 had the Customer been bound.

3. As a separate and independent obligation, the Guarantor unconditionally and irrevocably indemnifies the Seller against all losses, damages, costs, charges, liabilities and expenses which the Seller may at any time suffer or incur directly or indirectly because:

   (a) the Seller cannot enforce any agreement between the Seller and the Customer (or any of their terms);

   (b) any payment to the Seller in full or partial satisfaction of the Guaranteed Money is challenged for any reason;

   (c) the Customer fails to pay any Guaranteed Money when payable (whether or not it is obliged to do so);

   (d) a term of any agreement between the Seller and the Customer is breached or any event or circumstance occurs entitling the Seller to demand payment of money under such contract earlier than the time it would otherwise have become payable; or

   (e) the Seller entered into a contract with the Customer or exercises or attempts to exercise any power or right under such a contract or in relation to the recovery of any Guaranteed Money

   (together the **Indemnified Loss**).

4. The Guarantor agrees to pay the Seller any amount of Indemnified Loss under clause 3 immediately upon demand.

5. The Guarantor's liability under clauses 1 to 4 is not affected by:

   (a) the granting of time, forbearance or other concession by the Seller to the Customer or any Guarantor;

   (b) an absolute or partial release of the Customer or any Guarantor or a compromise with the Customer or any Guarantor;

(c) a variation of the terms of credit given to the Customer by the Seller;

(d) the termination of credit to the Customer by the Seller;

(e) the fact that any agreement between the Seller and the Customer is wholly or partially void, voidable or unenforceable;

(f) any other person failing to guarantee the payment of money by the Customer to the Seller or the unenforceability of a guarantee or indemnity given by any other person; or

(g) the exercise or purported exercise by the Seller of its rights against the Customer or any other guarantor.

6. The Guarantor's liability is not discharged by a payment to the Seller which is later avoided by law. If that happens, the Seller, the Customer and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.

7. Until the Seller has received all money payable to it by the Customer:

(a) the Guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of the Customer's creditors; and

(b) the Guarantor must hold any claim against the Customer it has and any dividend it receives from the Customer on trust for the Seller.

8. If the Seller assigns its rights against the Customer, the benefit of this guarantee and indemnity extends to the assignee and continues concurrently for the benefit of the Seller regardless of the assignment unless the Seller releases the Guarantor in writing.

9. The Guarantor charges all of its real and personal property as security for payment of all money now payable and which becomes payable by the Customer to the Seller.

10. If there is more than one Guarantor, this guarantee and indemnity binds each of them separately and any two or more of them jointly. A guarantor which is a trustee is bound both personally and in its capacity as a trustee.

Dated:

_____ **Witness** _____

_____ **Witness** _____

_____ **Witness** _____