

## TERMS AND CONDITIONS OF SALE

1. In these terms and conditions:

"**contract**" means any contract, agreement or other arrangement for the supply of goods and/or services by the Seller to the Customer;

"**Customer**" or "**you**" means a purchaser of goods or services from the Seller and "**your**" has a corresponding meaning;

"**goods**" means goods supplied by the Seller to a Customer;

"**PPSA**" means the *Personal Property Securities Act 2009*, and "**Personal Property Securities Register**", "**Purchase Money Security Interest**", "**Security Agreement**" and "**Security**";

"**Seller**" or "**we**" means Worldpoly ACN 092 362 260 and any related body corporate within the meaning of section 50 of the *Corporations Act 2001* and "**us**" and "**our**" have corresponding meanings;

**services** means services supplied by the Seller to a Customer;

**Terms** means these terms and conditions; and

a reference made to trade terms (such as "EXW") is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce and current at the date of sale.

2. The Customer agrees to adhere to these Terms. The only terms which are binding upon the Seller are:
- (a) those set out in these Terms or otherwise agreed to in writing by the Seller; and
  - (b) those, if any, which are imposed by law and which cannot be excluded.
3. The Customer agrees that these Terms apply to all contracts entered into by the Seller and supersede and prevail over any other terms and conditions included in any purchase order, sales confirmation or other document or communication from the Customer.
4. The Customer is not entitled to any credit facilities until it receives notice in writing from the Seller stating that credit facilities have been granted. Until the Customer receives such notice in writing from the Seller any goods that are supplied by the Seller to the Customer shall be on the basis of cash with your confirmation of order, or as otherwise specified in our quote.
5. The requirement for cash with your confirmation of order, or as otherwise specified in our quote is not waived because the Seller supplies goods or services to the Customer before credit facilities have been granted, and a waiver of the requirement for cash with your confirmation of order, or as otherwise specified in our quote is not effective unless it is in writing.
6. If the Seller agrees to supply goods or services to the Customer on credit the following terms apply:
- (a) Payment must be made no later than the date specified in our quote by way of teletransmission or electronic funds transfer to the Seller's bank in the Seller's country for the account of the Seller specified on the invoice.
  - (b) Payment is deemed to be made when the respective sums due have been received by the Seller's bank in immediately available funds.
  - (c) Time is of the essence in respect of the Customer's obligation to make payment.

- (d) If the Customer defaults in making payment to the Seller in accordance with these Terms the Seller may in its absolute discretion:
    - (i) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 18% per annum from the date on which the default arose; and
    - (ii) require the Customer to reimburse the Seller for all collection costs including legal costs incurred by the Seller calculated on a solicitor and client basis as a consequence of the Seller instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Seller in its discretion decides.
  - (e) Payments tendered by the Customer to the Seller must be applied as follows:
    - (i) firstly, as reimbursement for any collection costs incurred by the Seller in accordance with clause 6(d)(ii);
    - (ii) secondly, in payment of any interest charged to the Customer in accordance with clause 6(d)(i); and
    - (iii) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's account.
  - (f) The Seller will be entitled without notice to terminate any credit arrangement with the Customer.
  - (g) 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 terminate any existing credit arrangements until the additional security is given in a form satisfactory to the Seller.
7. The Seller's price list is not an offer to sell but is an invitation to treat only and the Seller reserves the right to accept or reject in its absolute discretion any orders which we may receive. The Seller may, without notice, alter the prices shown in the price list for any reason, including without limitation to take into account exchange rate fluctuations and the cost of labour and materials.
8. Orders placed with the Seller cannot be cancelled without the Seller's written approval. That approval may be given or withheld in the Seller's absolute discretion, and may be given on conditions including the payment by the Customer of reasonable and appropriate cancellation charges.
9. The price at which goods are sold or services provided does not (unless otherwise stated or agreed in writing) include sales tax or any goods and services, consumption, value added or similar tax, which must be added to the price and paid by the Customer as part of the price.
10. (a) Unless otherwise specified in writing, delivery is "Ex Works" (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.
- (b) If a delivery date is specified that date is an estimate only and the Seller is not liable for late delivery or non-delivery.
- (c) In particular and without limiting clause 10(b), 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.
- (d) If the Seller is unable to supply the Customer's total order these Terms continue to apply to the goods supplied.

11. 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 it thinks appropriate and must note the interest of the Seller on the policy and produce a certificate to this effect to the Seller on request.
12. Property in the goods supplied by the Seller to the Customer under any contract incorporating these Terms does not pass to the Customer until those goods, and all other goods supplied by the Seller to the Customer under individual contracts, have been paid for in full. Where the Customer does not make payment in respect of specific goods, payment must be treated as having been made first in respect of goods which have passed out of the possession of the Customer, and then in respect of whatever goods still in the possession of the Customer the Seller elects.
13. 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) the Customer may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for the Seller and must account to the Seller for the proceeds (including any proceeds from insurance claims) which must be kept in a separate bank account; and
  - (c) 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.
14. 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:
    - (i) to inspect the goods; and/or
    - (ii) if the Customer has breached these Terms, to reclaim possession of the goods; and
  - (b) upon which the Customer's records pertaining to the goods are held to inspect and copy the records.
15. 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.
16. The Customer acknowledges and agrees that:
  - (a) these Terms and contract shall comprise a Security Agreement for the purposes of the PPSA.
  - (b) until such time as the Seller receive full payment in cleared funds for all goods we have supplied to you, these Terms and a contract create a Purchase Money's Security Interest in the goods as security for your obligations to us under the contract and the Purchase Money's Security Interest is registrable on the Personal Property Securities Register;
  - (c) the Customer:
    - (i) 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;
    - (ii) 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;

- (iii) waives its right to receive a verification statement in the terms of section 157 of the PPSA; and
  - (iv) 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.
- 17. The provisions of clauses 12 to 16 inclusive apply despite any arrangement between the parties under which the Seller grants the Customer credit. Where the Seller grants the Customer credit for a specific period the credit period is for that period or until the re-sale of the goods by the Customer, whichever is the earlier.
- 18. 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.
- 19. A breach of contract is deemed to occur if:
  - (a) 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; or
  - (b) 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; or
  - (c) anything analogous or having a substantially similar effect to any of these events happens under a law that applies to the Customer.
- 20. The provisions of clause 19 apply despite any arrangement between the parties under which the Seller grants the Customer credit.
- 21. The Customer acknowledges that the Customer does not rely and it is unreasonable for the Customer to rely on the skill or judgment of the Seller as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample.
- 22. 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 marshal assets and securities and the Seller need not first seek recovery against trust assets.
- 23. 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 force majeure or by some other impediment beyond the Seller's control.
- 24. Any contract between the Seller and the Customer incorporating these Terms is governed in all respects by the law of Victoria, Australia and the parties submit to the jurisdiction of the courts of Victoria and the Commonwealth of Australia.
- 25. Consumer rights and remedies
  - (a) The Customer can obtain full details of the consumer rights and remedies referred to in this clause 25 from the Australian Competition and Consumer Commission ('ACCC') at [www.accc.gov.au](http://www.accc.gov.au) or from your local consumer protection agency.

- (b) The Seller does not supply goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption ("**PDH Goods or Services**").
- (c) If the Seller supplies a Customer who is a consumer with goods or services which are not PDH Goods or Services but costing no more than \$40,000 the consumer has extensive rights under the Australian Consumer Law ("**ACL**") including consumer guarantees and remedies but:
  - (i) in relation to these goods, the Seller's liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
    - (A) replacing the goods or supplying equivalent ones;
    - (B) repairing the goods;
    - (C) paying the cost of replacing the goods or of acquiring equivalent ones; or
    - (D) paying the cost of having the goods repaired; and
  - (ii) in relation to these services, the Seller's liability for failure to comply with a consumer guarantee is limited to:
    - (A) supplying the services again; or
    - (B) paying the cost of having the services supplied again.

26. Exclusion of implied terms and limitation of liability

- (a) Nothing in this clause 26 limits the consumer rights and remedies referred to in clause 25.
- (b) Subject to clause 25:
  - (i) any representation, warranty, condition, guarantee or undertaking that would be implied in these conditions of sale by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law;
  - (ii) 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 12 months after delivery to the Customer. This warranty does not apply to defects caused by improper installation, misuse, modification or lack of routine maintenance, and 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 25(c) and 26(b)(ix);
  - (iii) the Seller does not warrant or represent the performance, accuracy, reliability or continued availability of services or that services will operate free from faults, errors or interruptions;
  - (iv) in the event that problems are encountered with installing the goods, and the Customer does not contact the Seller for assistance or clarification at the time of encountering such problems, the Seller will not be liable for any additional, ancillary or consequential loss, expenses or charges associated with installation;
  - (v) in respect of any warranty applicable to goods sold, no claim by the Customer, whether for alleged damaged or defective goods, shortage or for any other cause whatsoever, shall be recognised by the Seller (and all such claims shall be deemed absolutely waived by the Customer) unless notified in writing to and received by the Seller within 48 hours after the date of delivery or collection as the case may be. If the Customer fails to give that notice, to the extent permitted by law, the goods are deemed to have been

accepted by the Customer and the Customer must pay for the goods in accordance with the provisions of these Terms;

- (vi) if the goods are not manufactured by the Seller then, to the extent permitted by law, the warranty given by the manufacturer is accepted by the Customer and is the only warranty given to the Customer in respect of the goods. The Seller will, on request by the Customer, assign to the Customer the benefit of any warranty or entitlement to the goods that the manufacturer has given to the Seller under any contract, to the extent that the benefit of any warranty or entitlement is assignable;
- (vii) the Customer must not return any goods which it claims are not in accordance with the contract unless the Seller has first given its written approval to their return. Their return must then be with freight and cartage prepaid by the Customer;
- (viii) if the Seller has given its written approval to the return of goods deemed to be accepted under clause 26(b)(v):
  - (A) the Seller will only give credit for the goods returned if they are in a saleable condition; and
  - (B) the Seller may charge a handling charge equivalent to 10% of the price of the goods returned, unless the Customer is a "consumer" for the purposes of the ACL;
- (ix) the Seller is never liable to the Customer for:
  - (A) economic loss;
  - (B) business interruption;
  - (C) loss of revenue, profits, actual or potential business opportunities or contracts;
  - (D) anticipated savings;
  - (E) loss of profits;
  - (F) indirect or consequential loss;
  - (G) an act or omission by a party for whom the Seller is not responsible in law;
  - (H) any loss arising from circumstances beyond the Seller's reasonable control; or
  - (I) the Seller's failure to continue to provide any services to the Customer for any reason whatsoever;

and otherwise, the Seller's maximum aggregate liability to the Customer under, in connection with or arising out of these Terms or the provision of goods or services to the Customer (whether pleaded in contract, tort, breach of statutory duty or on any other basis, whether arising from acts or omissions, and whether in relation to damage or loss the risk of which the Seller was or should have been aware) is limited to the aggregate charges the Customer actually paid to the Seller in respect of the goods or services.

## GUARANTEE AND INDEMNITY

I/We

.....  
(Name of Guarantor)

.....  
(Name of Guarantor)

.....  
(Address of Guarantor)  
("Guarantor")

.....  
(Address of Guarantor)

have requested Worldpoly Pty Ltd ACN 092 362 260 ("**Seller**") to supply to:

..... ("**Customer**") (insert name and ACN/ABN of customer)

goods or on credit and the Seller agrees to do so in consideration of this guarantee and indemnity given by the Guarantor in favour of the Seller.

1. The Guarantor guarantees to the Seller prompt payment of all money now payable and which becomes payable by the Customer to the Seller. The Seller may recover the 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. The Guarantor's liability under clauses 1 and 2 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.
4. 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.
5. 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 creditors; and
  - (b) the Guarantor must hold any claim it has and any dividend it receives on trust for the Seller.
6. 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.

- 7. 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.
- 8. 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.

Signed as a deed poll:

**SIGNED SEALED AND DELIVERED** by )  
..... (print )  
Guarantor name) in the presence of: )

\_\_\_\_\_  
Signature – Guarantor

\_\_\_\_\_  
Signature – Witness

\_\_\_\_\_  
Witness name – please print

Date:

**SIGNED SEALED AND DELIVERED** by )  
..... (print )  
Guarantor name) in the presence of: )

\_\_\_\_\_  
Signature – Guarantor

\_\_\_\_\_  
Signature – Witness

\_\_\_\_\_  
Witness name – please print

Date: