

Warranty

TUFFPOLY PTY LTD

25 Year Product Warranty ("The Warranty")

Fibre Reinforced Polymer retaining wall sleepers (when used in Australia)

1. Product Warranty

1.1 TUFFPOLY Pty Ltd ACN 670 527 536 ("TUFFPOLY") and its associated entities (together, "we", "us" or "our") imports and sells fibre reinforced polymer retaining wall sleepers ("Sleepers") to customers for use in Australia.

1.2 For the duration of the Warranty Period, TUFFPOLY warrants the original purchaser that its Sleepers are:

(a) fit for the intended purpose that goods of this kind are commonly supplied ("intended purpose");

(b) guaranteed to have a life in the natural elements of at least 25 years from the date the Sleeper is installed provided that the Sleeper is: (i) not subject to a domestic load that exceeds the applicable specifications provided by us; (ii) is at all times used for its intended purpose; and (iii) installed by a licensed retaining wall builder in accordance with our installation guidelines (if any) and all applicable laws and Australian standards; and (iv) is installed for use in a Lawfully Constructed Retaining Wall.

1.3 For the purpose of this Warranty:

(a) a "Lawfully Constructed Retaining Wall" means a retaining wall that has been constructed and assembled in accordance with all applicable laws (including the relevant building and engineering laws) and all applicable government requirements, approvals and requirements; and

(b) the "Warranty Period" is the period commencing from the date of the original purchase of the Sleeper and ending 25 years later; and

(c) "Consequential Loss" means any liability suffered by a person or entity that cannot reasonably be considered to arise naturally from a breach of contract, tort, under statute or any other basis in law or equity, whether or not such loss may be reasonably contemplated by the customer or TUFFPOLY at the time of purchase of the Sleepers, and includes but is not limited to loss of opportunity, loss of reputation, loss of use, indirect losses and loss of profit.

1.4 This Warranty is only applicable to customers who use the Sleepers in Australia. The warranties given under this document are subject to the limitations and qualifications set out in section 2 of this document.

1.5 The original purchaser maintains ownership of the real property upon which the TUFFPOLY sleepers were installed.

1.6 Proof of Original Purchase from a TUFFPOLY authorised reseller and must show:

(a) Date of the original purchase.

(b) Sufficient TUFFPOLY sleepers have been purchased to cover the number of sleepers claimed to be damaged.

1.7 To the extent there is an inconsistency between TUFFPOLY's terms and conditions (as set out on its website) and this Warranty, then this Warranty will prevail.

1.8 If any term or condition set out in this Warranty would be void or unenforceable by the operation of law, the term or condition is to be read down and construed as if it were varied, to the minimum extent necessary, so that the term or condition is not void.

2 Limitations and Qualifications

- 2.1 To the maximum extent permitted by law, if any of the warranties given under this document are breached by us then TUFFPOLY's liability to you is limited to resupplying or repairing the defective Sleeper (at TUFFPOLY's option). For the avoidance of doubt, the customer acknowledges that TUFFPOLY's liability under this Warranty does not extend to paying the cost of removing the defective Sleepers and transporting and installing any replacement Sleepers (and the customer agrees to pay these costs before any replacement Sleepers are supplied by TUFFPOLY under this Warranty).
- 2.2 TUFFPOLY will use its best efforts to match any replacement Sleeper supplied under this Warranty with the original Sleeper purchased by the customer but any replacement will ultimately be subject to availability and the customer acknowledges that the exact colours and designs of the replacement Sleeper may not match the original Sleeper for whatever reason including in circumstances where TUFFPOLY has discontinued the production of the original Sleeper.
- 2.3 Despite anything else in this Warranty, to the extent permitted by law under no circumstances will TUFFPOLY be liable to a customer, nor can a customer make a claim against TUFFPOLY for breach of any of the warranties given under this document, if any part of a Sleeper is defective or damaged as a result of:
- (a) any act or omission of the customer or any third party including but not limited to misuse, tampering, abnormal use or any use other than for the intended purpose by the customer or third party, or as a result of negligence or misconduct of the customer or third party (including any personal injury or physical damage to any property as the result of the customer or third party's misuse of the Sleepers or negligence);
 - (b) any damage sustained during transport, handling and storage of the Sleepers;
 - (c) any modification to the Sleepers by the customer or third party that has not been approved beforehand by us;
 - (d) normal wear and tear;
 - (e) failure of the customer or end user to maintain the Sleepers in accordance with the guidelines provided by TUFFPOLY or failure to regularly remove debris and/or allow free drainage of water, from the vicinity of the Sleepers;
 - (f) installation of the Sleeper other than by a licensed professional;
 - (g) installation of the Sleeper other than in accordance with all applicable laws or TUFFPOLY's installation guidelines (if any);
 - (h) installation of the Sleeper other than for use in a Lawfully Constructed Retaining Wall;
 - (i) any other act, omission, event or circumstance that is outside the reasonable control of TUFFPOLY including but not limited to a 'force majeure' event such as an earthquake, flood, act of God, war, pandemic or epidemic;
 - (j) extreme conditions including but not limited to ingress of higher than normal levels of salts, sandstorms, repeated sub-zero temperatures and severe coastal or marine environments; or
 - (k) any damage from chemical agents, fumes, liquids or solids other than direct rain or runoff
- 2.4 Despite anything else in this Warranty, for this Warranty to apply:
- (a) the retaining wall created from the use of the Sleepers must not exceed the maximum height applicable to those Sleepers as specified on our website or as otherwise specified by us from time to time;
 - (b) on the basis that the Sleepers have been designed by qualified engineers using certain assumptions of the properties of the soil in which the Sleepers are to be used (such as angle

of friction, density and maximum soil load or pressure in which the Sleepers are designed to withstand or retain which is described as 'ka' factor), the retaining wall in which the Sleepers are used must not be installed in an area where the soil properties are less favourable or inferior than these assumed soil properties as set out in the engineering reports for the relevant Sleepers. For example, the actual soil properties will be considered less favourable where the actual soil load exceeds the maximum assumed soil load or 'ka' factor). If you consider that the soil properties may be of less favourable or of inferior quality than those for which the Sleepers have been designed then TUFFPOLY recommends you obtain your own engineering advice before using the Sleepers in your retaining wall.

- 2.5 This Warranty does not cover nor extend to: (i) normal weathering, including (but not limited to) a natural change in texture and/or colour of the Sleepers; (ii) any change to the aesthetic condition or appearance of the Sleepers wholly or partly due to water ingress to and/or egress of substances from, the Sleepers; or (iii) to any further change to the aesthetic condition or appearance of the Sleepers after they are supplied to a customer which includes cutting sleepers and/or other alterations made to the Sleepers.
 - 2.6 To the maximum extent permitted by law, TUFFPOLY Sleepers' maximum aggregate liability for any claim made under this Warranty will not exceed the price actually paid by the customer for the defective Sleepers.
 - 2.7 If TUFFPOLY provides a customer with new Sleeper(s) to replace the defective Sleeper(s) as a result of a breach of any of the warranties given under this document, the new Sleeper(s) will be covered by the Warranty for the remainder of the Warranty Period as if the new Sleeper(s) were the original Sleeper(s). For the avoidance of doubt, TUFFPOLY will not provide a customer with a new Warranty in relation to the new Sleeper(s) provided to the customer in accordance with this Warranty.
 - 2.8 To the maximum extent permitted by law, under no circumstances will TUFFPOLY be liable to the customer for:
 - (a) labour costs associated with the removal of the defective Sleeper(s) or installation of the replacement Sleeper(s);
 - (b) any personal injury or property damage arising in connection with or caused by the defective Sleeper; or
 - (c) Consequential Loss.
 - 2.9 To the extent permitted by law but subject to section 3, the customer acknowledges and agrees that this Warranty will automatically come to an end (and the customer will have no recourse against TUFFPOLY under the Warranty) if there is a change of control in TUFFPOLY. For the purpose of clause 2.9, a 'change of control' will be deemed to occur upon the sale of all or substantially all of the assets and business or shares of TUFFPOLY. TUFFPOLY will use all reasonable endeavours to pass this Warranty onto any prospective purchaser of the business or company (and if the purchaser agrees to assume liability for this Warranty, then the customer is to have sole recourse against the purchaser in this instance).
- 3 Your rights under the Australian Consumer Law
- 3.1 To the extent that the customer acquires goods or services from TUFFPOLY as a consumer within the meaning of the Australian Consumer Law, the customer may have certain rights and remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.
 - 3.2 Nothing in this Warranty operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer, where to do so would:
 - (a) contravene the Australian Consumer Law; or

(b) cause any term of this Warranty to be void, (Non-excludable Obligation).

3.3 Except in relation to Non-excludable Obligations or any of the warranties given under this document, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded.

3.4 To the extent the Non-excludable Obligations apply to the sale of a Sleeper to the customer, TUFFPOLY's liability to the customer for a failure to comply with any Non-excludable Obligation in respect of that sale is limited to:

(a) the customer's choice of a replacement or refund of the defective Sleeper for a major failure and compensation for any other reasonably foreseeable loss or damage; or

(b) our choice of having the defective Sleeper repaired or replaced if the failure does not amount to a major failure. We'll do this within a reasonable time.

4 How to make a claim

4.1 To make a claim under this Warranty or to discuss Warranty or for technical support, contact TUFFPOLY by sending an email to info@tuffpoly.com.au with all the requested documentation and information.

4.2 To validate a warranty claim the claimant must:

(a) notify TUFFPOLY of the issues with the Sleeper that is alleged to be defective using the address details set out in section 4.1;

(b) provide the name and licence number of the licensed installer engaged to construct the retaining wall in which the relevant Sleeper was used;

(c) if the retaining wall in which the relevant Sleeper was used requires engineering, provide copies of the engineering reports and designs that were required to be prepared for the construction of the retaining wall including any soil and geotechnical report in respect of the soil in which the retaining wall is to be installed;

(d) provide copies of any council approvals that were required to be obtained for the construction of the retaining wall (if applicable); and

(e) allow TUFFPOLY reasonable access to the property to inspect and test the Sleeper being claimed under this Warranty to assess the nature of the issues with the Sleeper. TUFFPOLY will pay the cost of the initial inspection and testing of the Sleeper.

4.3 Reasonable evidence of the date of your original purchase must be provided to qualify for these warranties. The original sales receipt is your best proof of purchase.

4.4 Any claim under this Warranty must be notified to TUFFPOLY within 14 days after a customer first noticed or ought reasonably to have noticed, the potential issue or defect with the Sleeper(s) supplied to that customer.

4.5 If TUFFPOLY is not notified of any claim under this Warranty within the period referred to in section 4.4, TUFFPOLY may in its sole discretion deny the claim and shall have no liability under this Warranty.

4.6 A Customer will bear any costs and expenses incurred or payable by that Customer in relation to any claim by them under this Warranty.

4.7 TUFFPOLY reserves the right to undertake any inspection and/or or conduct any test or investigation that TUFFPOLY considers in its sole discretion necessary or desirable in order to validate a claim made under this Warranty, at any time after a claim is made under this Warranty.