
Scheme Implementation Agreement

Ludowici Limited ACN 000 001 365

FLSmith Pty Limited

FLSmith & Co. A/S

16 February 2012

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Parties

- 1 **Ludowici Limited ACN 000 001 365** of 67 Randle Road, Pinkenba, Queensland 4008 Australia (**Target**).
 - 2 **FLSmidth Pty Limited ACN 000 221 590** of 5 Comserv Close, West Gosford, New South Wales 2250 Australia (**Bidder**).
 - 3 **FLSmidth & Co. A/S** of Vigerslev Alle 77, DK-2500 Valby, Denmark (**FLS**).
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Background

- A On 23 January 2012, Target announced via the ASX platform that it had entered into a Process Agreement with FLS to document certain key terms upon which Target and FLS would negotiate and finalise in good faith a Scheme Implementation Agreement between FLS (or an affiliate of FLS) and the Target in relation to the potential acquisition of all the Shares in Target by way of a scheme of arrangement.
- B Bidder is a Subsidiary of FLS.
- C Bidder and Target have now agreed to implement the Scheme, upon and subject to the terms and conditions of this agreement.
- D Subject to the terms of this agreement:
 - (i) Bidder proposes to acquire all of the Scheme Shares for the Scheme Consideration pursuant to the Scheme;
 - (ii) Target has agreed to propose the Scheme to Shareholders and to issue the Scheme Booklet to Shareholders; and
 - (iii) Target and Bidder have agreed to implement the Scheme.

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this agreement.

1.3 Process Agreement

For the avoidance of doubt, the parties agree and acknowledge that on the date on which the condition in clause 3.1(a) is satisfied:

- (a) this agreement will supersede the Process Agreement which, upon the satisfaction of the condition in clause 3.1(a), will no longer be of any effect and will be terminated in accordance with its terms;
- (b) each party will release its rights and agree with the other party that it will not make a Claim against the other party pursuant to the Process Agreement or in connection with any past breach of the Process Agreement; and
- (c) this agreement and the Confidentiality Deed will contain the entire agreement between the parties concerning the subject matter of this agreement.

2 Agreement to proceed with the Scheme

2.1 Target to propose the Scheme

Target must propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act on and subject to the terms and conditions of this agreement, and must use its reasonable endeavours to do so as soon as is reasonably practicable and in accordance with the Timetable.

2.2 Bidder to assist

Bidder must assist Target to propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act and on and subject to the terms and conditions of this agreement, and must use its reasonable endeavours to do so as soon as is reasonably practicable and in accordance with the Timetable.

3 Conditions Precedent

3.1 Condition Precedent

- (a) The provisions of this agreement other than this clause 3.1 and clauses 1 (**Interpretation**), 17 (**Notices**), 18 (**General**), 19 (**Counterparts**), 20 (**Governing law and jurisdiction**) and 21 (**Assignment**) do not become binding until the Takeovers Panel determines the Proceedings.
- (b) If the Takeovers Panel orders that FLS cannot increase its offer price as contemplated by this agreement, and that decision is upheld on appeal or review (if applicable), then this agreement immediately terminates, unless otherwise agreed by the parties, once all appeals and review rights through the Takeovers Panel have been exercised or have expired.

3.2 Conditions Precedent to completion

The obligations of Target and Bidder to proceed to completion of the Scheme are conditional on, and the Scheme will not become Effective until, the satisfaction or waiver of each of the Conditions Precedent to the extent and in the manner set out in clauses 3.5 and 3.6.

3.3 Conditions Precedent for the benefit of Bidder and Target

The Conditions Precedent for the benefit of Bidder and Target are:

- (a) **Court approval:** the Court approves the Scheme on the Second Court Date in accordance with section 411(4)(b) of the Corporations Act and an office copy of the Scheme Orders are lodged with ASIC as contemplated by section 411(10) of the Corporations Act;
- (b) **Shareholder approval:** before 8.00 am on the Second Court Date, Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (c) **no restraint adversely affecting Implementation:** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of implementation of the Scheme is in effect at 8.00 am on the Second Court Date;
- (d) **FIRB approval:** before 8:00am on the Second Court Date, the Treasurer of the Commonwealth of Australia either:
 - (i) gives an approval to the proposed acquisition of all the Shares by Bidder and that approval is not subject to conditions, or is subject only to conditions that Bidder, acting reasonably, considers to be acceptable; or
 - (ii) has issued a notice stating that the Commonwealth Government does not object to Bidder acquiring the Shares pursuant to the Scheme and that notice is not subject to conditions, or is subject only to conditions that Bidder, acting reasonably considers to be acceptable; or
 - (iii) has become, or is precluded (at the date of this document or at any time before the Scheme becomes Effective) from making an order in respect of the acquisition of the Shares by Bidder pursuant to the Scheme,under FATA; and
- (e) **Regulatory approvals:** before 8.00 am on the Second Court Date, all Regulatory Approvals required to implement the Scheme are granted or obtained on terms reasonably acceptable to Bidder and those Regulatory Approvals are not withdrawn, cancelled or revoked prior to the implementation of the Scheme.

3.4 Conditions Precedent for the benefit of Bidder only

The Conditions Precedent for the benefit of Bidder only are:

- (a) **Options:** that either:
 - (i) Patrick Largier enters into an agreement with Target in a form approved by Bidder prior to the date of despatch of a Scheme Booklet in respect of the Scheme pursuant to which Patrick Largier agrees to exercise all of his

Options in sufficient time for the Shares issued on exercise of the Options to participate in the Scheme;

- (ii) Patrick Largier, Target and Bidder enter into an agreement in a form approved by Bidder prior to the date of despatch of a Scheme Booklet in respect of the Scheme under which the Options are cancelled (or at Bidders' direction, transferred to Bidder) with effect from a date to be agreed but in any event no later than the Effective Date for consideration equal to the Scheme Consideration less any amount payable to Target in respect of the exercise of the Options; or
- (iii) a combination of (i) and (ii) above,

provided all such Options are either exercised in sufficient time to participate in the Scheme, transferred to Bidder or cancelled no later than the Effective Date;

(b) **LTIP Rights:** that either:

- (i) all of the LTIP Rights vest in Patrick Largier and the Shares issued on vesting are issued in sufficient time for those Shares to participate in the Scheme; or
- (ii) Patrick Largier, Target and Bidder enter into an agreement in a form acceptable to Bidder under which the LTIP Rights are cancelled (or at Bidder's direction, transferred to Bidder) with effect from a date to be agreed but in any event no later than the Effective Date for consideration equal to the Scheme Consideration,

provided all such LTIP Rights are vested in sufficient time to participate in the Scheme, transferred to Bidder or cancelled no later than the Effective Date;

(c) **statement of voting intention:** that no later than the date on which this agreement is executed, the Family Shareholders make a public announcement either directly or through Target confirming that in the absence of a Superior Proposal and subject to this agreement becoming binding (as contemplated by clause 3.1(a)) they:

- (i) support the Scheme; and
- (ii) will vote or cause to be voted all the Shares held or controlled by them at the date of the Scheme Meeting (which must not be less than 5,796,179 Shares) in favour of the Scheme; and

(d) **no Target Prescribed Event or Material Adverse Effect:** that between the date of this agreement and 8.00 am on the Second Court Date there is no:

- (i) Material Adverse Effect on Target; or
- (ii) Target Prescribed Event.

3.5 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clause 3.3 are for the benefit of each of Bidder and Target and any breach or non-fulfilment of any of the Conditions Precedent in:
 - (i) clauses 3.3(a), 3.3(b), 3.3(c) and 3.3(d) cannot be waived; and

- (ii) clause 3.3(e) may only be waived with the written consent of both the Bidder and Target.
- (b) The Conditions Precedent in clause 3.4 are for the sole benefit of Bidder, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived in writing by Bidder.
- (c) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.5 may do so in its absolute discretion.
- (d) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing a party for any breach of this agreement constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

3.6 Best endeavours and co-operation

- (a) Without prejudice to any other obligations of the parties under this agreement:
 - (i) each of Target and Bidder must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clause 3.3 to the extent that it is within their respective control;
 - (ii) Target must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.4; and
 - (iii) neither Target nor Bidder will take any action or refrain from taking any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent without the prior consent of the other party, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law.
- (b) For the purposes of paragraphs (i) to (ii), the "best endeavours" of either Target or Bidder will, subject to clause 3.8, require that party to (among other things):
 - (i) seek to satisfy the relevant Condition Precedent as soon as practicable after the date of this agreement or seek to ensure the relevant Condition Precedent continues to be satisfied at all times until the last time it is to be satisfied (as the case requires) with a view to the Effective Date occurring on or before the End Date provided that the parties are not obliged to waive any Condition Precedent; and
 - (ii) subject to clause 3.7, co-operate with the other party or a Governmental Agency in good faith with a view to satisfying the Conditions Precedent, including providing all information (other than commercially sensitive information) reasonably required by the other party in relation to the Bidder Group or Target Group (as applicable) in order to satisfy the Conditions Precedent and providing all information (other than commercially sensitive information) reasonably required by any Governmental Agency to such Governmental Agency as appropriate. For the avoidance of doubt, where

Bidder proposes to disclose any Confidential Information of Target to a Governmental Agency (whether pursuant to a request by a Governmental Agency or otherwise), Bidder must seek Target's prior written consent to such disclosure which consent must not be unreasonably withheld or delayed.

3.7 Obligations in relation to Regulatory Approvals

- (a) Without limiting clause 3.6 but subject to clause 3.8, the Bidder and the Target must use all reasonable endeavours to ensure that each Regulatory Approval is satisfied as soon as practicable after the date of this agreement and in particular the Bidder and the Target must, (except where a relevant Governmental Agency requires the Bidder and Target to make separate confidential submissions in respect of the Regulatory Approval sought):
 - (i) provide to the other party (as applicable) a draft of each document which it has prepared for the purposes of procuring satisfaction of any Regulatory Approval and a reasonable opportunity to comment on that draft (except to the extent such document contains commercially sensitive information);
 - (ii) provide to the other party (as applicable) a copy of each notice given, application made and all other information supplied to any third party (except to the extent such document contains commercially sensitive information), and each notice or request received from any Regulatory Authority in connection with procuring the satisfaction of any Regulatory Approval (except to the extent such document contains commercially sensitive information);
 - (iii) notify the other party (as applicable) of any meetings to be held with a Regulatory Authority for the purposes of procuring the satisfaction of any Regulatory Approval and permit the other party and its professional advisers to be present at such meeting (except to the extent that such meeting involves the discussion of commercially sensitive information); and
 - (iv) consult with the other party (as applicable) in relation to any further information to be provided to the relevant Regulatory Authority (except to the extent such information contains commercially sensitive information).

3.8 Provision of undertakings

Notwithstanding any other provision of this agreement, for the purposes of satisfying any Regulatory Approval, neither the Bidder nor the Target is required to agree to any conditions or to provide or to agree to provide any written undertakings to a Regulatory Authority which are not reasonably acceptable to the Bidder or the Target (as the case requires).

3.9 Notifications

Each of Target and Bidder must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent either directly or through its Advisers;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and

- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.6).

3.10 Certificate in relation to Conditions Precedent

Each party must:

- (a) give the Court on the Second Court Date a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Conditions Precedent in clause 3.3(a) have been satisfied or waived; and
- (b) give the other party a draft of its certificate by 5.00 pm on the Australian Business Day prior to the Second Court Date.

3.11 Failure of Condition Precedent

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement by the date specified in this agreement for satisfaction of the Condition Precedent; or
 - (ii) there is an act, failure to act, event or occurrence which will prevent a Condition Precedent being satisfied by the date specified in clause 3.3 or 3.4 (as applicable) for its satisfaction (and the breach or non-fulfilment of the Condition Precedent which would otherwise occur has not already been waived in accordance with this agreement),

either Bidder or Target may serve notice on the other of them, and Bidder and Target must then consult in good faith with a view to:

- (iii) determining whether the Scheme or a transaction that results in the Bidder and its Related Bodies Corporate having beneficial ownership of all of the Shares may proceed by way of alternative means or methods;
 - (iv) extending the relevant time or date for satisfaction of the Condition Precedent or the End Date; or
 - (v) changing the date the application is to be made to the Court for an order under subsection 411(4) of the Corporations Act approving the Scheme or adjourning the application (as applicable) to another date agreed to in writing by the Target and the Bidder and, if required, approved by the Court (being a date no later than 5 Australian Business Days before the End Date).
- (b) If Target and Bidder are unable to reach agreement on such alternative means or methods or such extension within the Required Consultation Period, either Target or Bidder may terminate this agreement, provided that:
 - (i) the Condition Precedent is for the benefit of the party seeking to terminate the agreement (whether or not the Condition Precedent is also for the benefit of another party); and
 - (ii) there has been no failure by the party seeking to terminate the agreement to comply with its obligations under this agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice

relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 15.4 will have effect.

- (c) For the purposes of this clause, the **Required Consultation Period**, is the shorter of:
- (i) 10 Australian Business Days after both parties become aware that subparagraph (a)(i) or (a)(ii) of this clause 3.11, as the case may be, is triggered; and
 - (ii) the period commencing at the time both parties become aware that subparagraph (a)(i) or (a)(ii) of this clause 3.11, as the case may be, is triggered and ending at 8.00am on the Second Court Date.

4 The Scheme

4.1 Outline of the Scheme

- (a) Bidder and Target agree that:
- (i) Target will propose the Scheme in the form set out in Attachment B, or in such other form as Bidder and Target agree in writing (such agreement not to be unreasonably withheld or delayed);
 - (ii) Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Scheme without the prior written consent of Bidder (such approval not to be unreasonably withheld or delayed); and
 - (iii) the Scheme, if approved by the Court, will be subject to any alterations or conditions that are made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Bidder and Target (such approval not to be unreasonably withheld or delayed).
- (b) Subject to the Scheme becoming Effective, on the Implementation Date the Scheme will be implemented and:
- (i) all of the Scheme Shares will be transferred to Bidder in accordance with the terms of the Scheme; and
 - (ii) in consideration for the transfer to Bidder of all of the Scheme Shares, the Scheme Participants will receive the Scheme Consideration in accordance with clause 4.2 and the terms of this agreement and the terms of the Scheme.

4.2 Scheme Consideration

Subject to the Scheme becoming Effective, Bidder agrees in favour of Target (in its own capacity and as trustee on behalf of the Scheme Participants) that:

- (a) in consideration of the transfer to Bidder of each Scheme Share under the Scheme, Bidder will accept such transfer, and will provide to each Scheme Participant \$10.00 in cash for each Scheme Share held by them less the amount of the Ordinary Dividend, the Special Dividend and any other dividend or distribution declared or paid by Target on or after the date of this agreement, in accordance

with the terms of this agreement and the terms of the Scheme (**Scheme Consideration**); and

- (b) before 12:00 noon on the Implementation Date, the Bidder will pay, or procure the payment of, to a trust account operated by or on behalf of the Target to be held on trust for Scheme Participants, an amount in cleared funds equal to the Scheme Consideration.

5 Special Dividend

5.1 Special Dividend

Target may (in its absolute discretion) announce, declare and pay a fully franked special dividend on Shares (**Special Dividend**) provided that:

- (a) the Special Dividend does not exceed \$0.60 per Share;
- (b) the payment of the Special Dividend does not result in Target being in franking credit deficit immediately after paying the Special Dividend;
- (c) the Special Dividend is not paid if the Scheme does not become Effective; and
- (d) the Special Dividend is paid prior to the Record Date.

5.2 Tax Ruling

- (a) Bidder and Target must work in good faith to seek and obtain, on behalf of the Shareholders, a class ruling in a form acceptable to Bidder and Target (both acting reasonably) given by the Australian Taxation Office in relation to the tax implications of payment of the Special Dividend (and if required the Ordinary Dividend) to Shareholders.
- (b) Bidder and Target acknowledge and agree that matters relating to the Special Dividend are subject to further consultation and agreement between the parties. Bidder and Target must discuss and co-operate in good faith with each other in reaching agreement with respect to these matters. These matters include, but are not limited to, the form and manner of payment of the Special Dividend.

5.3 Financier's confirmation

The Financier has confirmed that, subject to credit approval, it will extend a loan to Target for the purpose of funding the Special Dividend.

5.4 Funding of Special Dividend

If the Financier will not, or does not, provide finance to Target for the purpose of funding the Special Dividend, Bidder must loan to Target (on ordinary commercial terms) the aggregate amount of the Special Dividend to enable Target to fund the Special Dividend.

6 Implementation of the Scheme

6.1 Target's obligations in respect of the Scheme

Target must take all steps reasonably necessary to propose and implement the Scheme, and must use its reasonable endeavours to do so as soon as is reasonably practicable

after the date of this agreement substantially in accordance with the Timetable, and in particular Target must:

- (a) **(public announcements)** make the Target Public Announcement on the Announcement Date in accordance with clause 10.1;
- (b) **(preparation of Scheme Booklet)** promptly prepare the Scheme Booklet in accordance with clause 6.3;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(provision to ASIC)** as soon as reasonably practicable after the date of this agreement but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder, liaise with ASIC in relation to the draft Scheme Booklet and (to the extent reasonably practicable) keep Bidder reasonably and promptly informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use its best endeavours, in co-operation with Bidder, to resolve any such matters;
- (e) **(section 411(17)(b) statement)** apply to ASIC for the production of:
 - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (ii) if Target Shareholder Approval is obtained, a statement in accordance with section 411(17)(b) of the Corporations Act;
- (f) **(Court documents)** promptly prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Bidder with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Bidder and its Representatives on those drafts;
- (g) **(first Court hearing)** promptly lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (h) **(registration of Scheme Booklet)** if the Court directs Target to convene the Scheme Meeting, as soon as reasonably practicable after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (i) **(Scheme Meeting)** promptly take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Scheme Booklet to Shareholders, convening and holding the Scheme Meeting in accordance with the Court orders, and putting the Scheme Resolution to Shareholders at the Scheme Meeting, provided that if this agreement is terminated under clause 15 it will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (j) **(update Scheme Booklet)** if it becomes aware of information after the date of despatch of the Scheme Booklet, that is material for disclosure to Shareholders in deciding whether to approve the Scheme Resolution or that is required to be

disclosed to Shareholders under any applicable law, as soon as reasonably practicable:

- (i) inform Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law and after consultation with Bidder as to the manner of provision of that information to Shareholders; and
 - (ii) to the extent it is reasonably practicable to do so, provide Bidder with drafts of any documents that it proposes to issue to Shareholders under this clause 6.1(j) and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments received in a timely manner from Bidder or its Representatives on those drafts;
- (k) **(promote the Scheme)** subject to the proper performance by the Target Directors of their fiduciary and statutory duties, during the period from the date of this agreement to the Implementation Date, Target will, and will procure that the Target Directors will, co-operate in good faith with Bidder in efforts reasonably requested by the Bidder to promote the merits of the Scheme to Target Shareholders, including, where agreed to be appropriate, through communications with Shareholders, and will not, and will procure that the Target directors do not, act in a manner adverse, or which the Bidder reasonably considers to be adverse, to the Scheme;
- (l) **(Target Register information)** as soon as reasonably practicable after the Record Date, and in any event at least three Australian Business Days before the Implementation Date, give to Bidder (or as it directs) details of the names, registered addresses and holdings of Scheme Shares of every Scheme Participant, in such form as Bidder may reasonably require;
- (m) **(apply for Court approval)** subject to the satisfaction or waiver of all Conditions Precedents other than the Condition Precedent in clause 3.3(a), promptly apply to the Court for an order approving the Scheme under section 411(4)(b) of the Corporations Act;
- (n) **(implementation of the Scheme)** if the Court approves the Scheme:
- (i) lodge with ASIC an office copy of the Court orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as reasonably practicable after the Court makes those orders, and in any event by no later than 4pm on the first Australian Business Day after the date on which the Court makes those orders or such other Australian Business Day as Target and Bidder may agree in writing;
 - (ii) use best endeavours to ensure that ASX suspends trading in Shares with effect from the close of trading on the Effective Date;
 - (iii) close the Register as at the Record Date to determine the identity of Scheme Participants and to determine their entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iv) promptly execute proper instruments of transfer of, and register all transfers of, the Scheme Shares to Bidder in accordance with the Scheme on the Implementation Date; and
 - (v) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme and to effect the transfer of the Scheme Shares to Bidder;
- (o) **(ASX listing):**

- (i) use its best endeavours to ensure that the Shares continue to be quoted on ASX until the close of business on the Implementation Date; and
 - (ii) not request ASX to remove the Target from the official list of ASX until after the Implementation Date;
- (p) **(keep Bidder informed)** from the First Court Date until the Implementation Date, promptly inform Bidder if it becomes aware that the Scheme Booklet contains a statement that is or has become misleading or deceptive in a material respect or that contains a material omission;
- (q) **(Bidder Provided Information)** only use Bidder Provided Information with the prior written consent of Bidder (not to be unreasonably withheld);
- (r) **(Bidder representation at Court)** allow and not oppose any application by Bidder for leave of the Court to be represented by Counsel at the court hearings convened in connection with the Scheme, provided that in making any application for representation or in appearing before the Court, Bidder acts in accordance with the Transaction Documents and does not oppose any application by Target in exercise of (and consistent with) its rights and obligations under the Transaction Documents; and
- (s) **(all things necessary or desirable)** do all other things contemplated by or reasonably necessary or desirable to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

6.2 Bidder's obligations in respect of the Scheme

Bidder must take all steps reasonably necessary to assist Target to propose and implement the Scheme, and must use its reasonable endeavours to do so as soon as is reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, and in particular Bidder must:

- (a) **(provide information)** provide to Target the information referred to in clause 6.3(d);
- (b) **(preparation of Scheme Booklet)** provide assistance with the preparation of the Scheme Booklet in accordance with clause 6.3 including, as soon as reasonably practicable after receipt from the Target of a draft of the Scheme Booklet, the Bidder must provide the Target with any comments or suggested amendments to that draft in good faith;
- (c) **(Independent Expert information)** provide all assistance and information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(liaison with ASIC)** provide reasonable assistance to Target to assist Target to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme during its review of the Scheme Booklet;
- (e) **(comments on Regulator's Draft)** as soon as reasonably practicable after receipt from the Target of the proposed Regulator's Draft, either:
 - (i) confirm in writing to the Target that the Bidder Provided Information in the form and context in which it appears in the proposed Regulator's Draft is not misleading or deceptive in any material respect and does not contain any material omission; or

- (ii) provide to the Target the changes required to ensure that the Bidder Provided Information in the form and context in which it appears in the proposed Regulator's Draft is not misleading or deceptive in any material respect and does not contain any material omission;
- (f) **(approval of Scheme Booklet)** provide to the Target the Bidder's written consent to inclusion of the Bidder Provided Information in the Scheme Booklet to be sent to Shareholders in the form and context in which any Bidder Provided Information (and any information solely derived from, or prepared solely in reliance on, the Bidder Provided Information) is used, such consent not to be unreasonably withheld or delayed by the Bidder;
- (g) **(keep Target informed)** from the First Court Date until the Implementation Date, promptly inform Target if it becomes aware that the Bidder Provided Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (h) **(Court representation)** procure that it is represented by counsel at the Court hearings convened in connection with the Scheme, at which, through its counsel and if requested by the Court, Bidder will undertake to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (i) **(Deed Poll)** prior to the First Court Date, execute the Deed Poll;
- (j) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration in accordance with this agreement, the Scheme and the Deed Poll on the Implementation Date; and
- (k) **(Target Provided Information)** during the period until the Target Provided Information becomes publicly available, only use the Target Provided Information with the prior written consent of Target (not to be unreasonably withheld).

6.3 Preparation of Scheme Booklet

- (a) **(Target to prepare)** Target must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this agreement and substantially in accordance with the Timetable.
- (b) **(Compliance requirements)** Target must ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except in respect of the Bidder Provided Information.
- (c) **(Content of Scheme Booklet)** Without limiting clause 6.3(b), the Scheme Booklet will include or be accompanied by:
 - (i) the Scheme;
 - (ii) the Explanatory Statement;
 - (iii) a copy of this agreement (without the schedules and attachments) or a summary of it;
 - (iv) a copy of the executed Deed Poll;

- (v) the Independent Expert's Report or a concise version of the Independent Expert's Report;
 - (vi) a statement that the Target Board unanimously considers the Scheme to be in the best interests of Shareholders and recommends that Shareholders approve the Scheme, in the absence of a Superior Proposal, unless prior to the issue of the Scheme Booklet the Target Board has changed or withdrawn those statements and recommendations in accordance with clause 9.3; and
 - (vii) a statement that each Target Director who is able to control voting rights in relation to Shares (including by way of proxies) intends to vote those Shares, or procure that those Shares are voted, in favour of the Scheme, in the absence of a Superior Proposal, unless prior to the issue of the Scheme Booklet the Target Director has changed his or her voting intention in accordance with clause 9.3.
- (d) **(Bidder Provided Information)** Bidder must:
- (i) provide the Bidder Provided Information to Target for inclusion in the Scheme Booklet in a reasonable time to allow Target to prepare the Scheme Booklet in accordance with this agreement and use all reasonable endeavours to do so substantially in accordance with the Timetable, in a form that includes all information regarding the Bidder Group that is required by the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, including all the information that would be required under sections 636(1)(c), (f), (h), (i), (k)(ii), (l) and (m) of the Corporations Act to be included in a bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid (the Bidder acknowledging that the Target will rely on such information to prepare the Scheme Booklet and agreeing the Bidder Provided Information will be provided in good faith), and must provide to Target such assistance as Target may reasonably require in order to adapt such information for inclusion in the Scheme Booklet; and
 - (ii) use reasonable endeavours to ensure that the Bidder Provided Information is not misleading or deceptive (including by omission of information or otherwise) in any material respect.
- (e) **(Review by and consultation with Bidder)** Target must make available to Bidder drafts of the Scheme Booklet (including drafts of the Independent Expert's Report) and, consult with Bidder in relation to the inclusion of any Bidder Provided Information and any information solely derived from, or prepared solely in reliance on, the Bidder Provided Information) and consult with Bidder in relation to comments from Bidder and its Representatives in respect of each draft document received in a timely manner with a view to incorporating or adopting Bidder's reasonable comments to the extent considered appropriate by the Target acting reasonably except that in respect to the Independent Expert's Report, the Target will only accept comments from the Bidder and its Representatives on factual matters relating to the Bidder Provided Information that have been included in the Independent Expert's Report.
- (f) **(Consent of Bidder)** Bidder must consent to the inclusion of the Bidder Provided Information in the Scheme Booklet in the form and context in which it is included (and any information solely derived from, or prepared solely in reliance on, the Bidder Provided Information).

- (g) **(Verification)** Target must undertake appropriate verification processes in relation to the Target Provided Information included in the Scheme Booklet, and Bidder must undertake appropriate verification processes in relation to the Bidder Provided Information included in the Scheme Booklet.

6.4 Responsibility Statement

Each party represents to the other that, subject to compliance by the other party with the relevant terms of this agreement, the responsibility statement to appear in the Scheme Booklet will be in the form of Schedule 2, or in such other form as the parties reasonably agree.

6.5 Disputes in relation to information

If there is a dispute between the parties in relation to the presentation or content of any part of the Scheme Booklet (including the Bidder Provided Information), the parties must consult in good faith and use their reasonable endeavours to resolve the dispute within 5 Business Days of the dispute arising. If the parties fail to agree on the disputed presentation or content:

- (a) the Target will have the final decision on any information other than the Bidder Provided Information; and
- (b) the Bidder will have the final decision on any Bidder Provided Information.

The parties must continue to perform their obligations under this agreement even where there is a dispute in relation to the presentation or content of any part of the Scheme Booklet.

6.6 Assistance of Representatives

Each party must procure that its Representatives work (including by attending meetings and by providing reasonable co-operation, assistance and information) in good faith and in a timely and co-operative fashion with the other party to implement the Scheme, so far as is reasonably practical in accordance with the Timetable, and to prepare all documents required relating to the Scheme including the Scheme Booklet.

6.7 Target Board and management changes

As soon as practicable on the Implementation Date, Target must:

- (a) cause the appointment as directors of Target and of any Target Subsidiary of such number of persons nominated by Bidder; and
- (b) procure that such members of the Target Board and the Boards of any of its Subsidiaries as nominated by Bidder resign from the Target Board or any Target Subsidiary (as applicable), and that each such director provide written notice to the effect that they have no Claim outstanding for loss of office, remuneration or otherwise against Target or Target Subsidiary (as applicable).

7 Guarantee

- (a) FLS unconditionally and irrevocably:
 - (i) guarantees to the Target, on demand, the due and punctual performance of the Bidder's obligations under this agreement; and

- (ii) indemnifies the Target against all direct Losses (excluding any consequential or indirect Losses) which the Target may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Bidder of its obligations under this agreement.
- (b) This clause 7 is a continuing obligation of FLS and remains in full force and effect for so long as the Bidder has any liability or obligation to the Target under this agreement and until all of those liabilities or obligations have been fully discharged.

8 Conduct of Business

8.1 Conduct of business

- (a) Subject to clause 8.1(c), during the Exclusivity Period, Target must (and must procure that each of its Related Bodies Corporate) conduct its business in the ordinary course, in substantially the same manner and at the same locations as conducted on the date of this agreement, and to the extent consistent, use reasonable efforts to:
 - (i) preserve intact its business organisation;
 - (ii) keep available the services of its officers and employees;
 - (iii) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with a Target Group Member (including using reasonable endeavours to obtain consents from third parties to any change of control provision which Bidder reasonably requests in contracts or arrangements to which a Target Group Member is a party); and
 - (iv) maintain its business and assets, including maintaining at least its current level of insurance,as in place on the date of this agreement, except as otherwise agreed between the parties;
- (b) Subject to clause 8.1(c), during the Exclusivity Period, Target must not enter into, or permit any Target Group Member to enter into, a Target Material Transaction without the prior consent of Bidder (which consent must not be unreasonably withheld or delayed).
- (c) The obligations of Target under clauses 8.1(a) and 8.1(b) above do not apply to action undertaken by Target:
 - (i) for which Bidder has provided its prior written consent to Target (such consent not to be unreasonably withheld or delayed);
 - (ii) which is required or permitted to be undertaken pursuant to this agreement, the Scheme or is otherwise required by law;
 - (iii) which has been publicly announced by Target on the ASX platform prior to the date of this agreement;
 - (iv) which arises as a result of a Court or Governmental Agency order, injunction or undertaking; or

- (v) which is in accordance with contractual obligations that existed as at the date of this agreement, provided such obligations have been fairly disclosed in the Data Room Materials.

8.2 Access

Between the date of this agreement and the earlier of the Implementation Date and the date this agreement is terminated (the **Relevant Period**), Target must (and must procure that each of its Related Bodies Corporate), as soon as reasonably practicable following any written request made by Bidder, provide Bidder and its Representatives with reasonable access:

- (a) to the books, documents, records, management accounts, financial statements and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) of any Target Group Member; and

- (b) to the Officers and Advisers (including auditors) of any Target Group Member,

in each case which Bidder reasonably requires for the purposes of:

- (c) implementing the Scheme;
- (d) transitional planning and operating arrangements with respect to the business of Target Group following implementation of the Scheme; or
- (e) any other purpose which is agreed in writing between the parties,

provided in every case that such provision or access does not place an unreasonable burden on the ability of Target to run its business or breach any law or regulation.

8.3 Limits on Target obligations

The obligations in clause 8.2 do not require Target to:

- (a) provide information to Bidder concerning the Target Directors' and management's consideration of the Scheme; or
- (b) breach an obligation of confidentiality to any person.

8.4 Confidentiality

- (a) Each of FLS and Target acknowledges that it has entered into the Confidentiality Deed in relation to the Scheme and that the terms of that Confidentiality Deed continue to apply.
- (b) Bidder and FLS each acknowledge and agree that all Confidential Information (as defined in the Confidentiality Deed) that is provided to Bidder or FLS or their Representatives by any Target Group Member or any of their Representatives pursuant to this clause 8 (or otherwise under or in connection with this agreement) will be provided subject to the terms of the Confidentiality Deed.

8.5 No Dividend

Until the Scheme is Effective, Target must not declare or pay a dividend other than the Ordinary Dividend and the Special Dividend.

8.6 Directors and officers insurance

Subject to the Scheme becoming Effective, Target undertakes that it will in respect of all Target Directors prepay directors and officers insurance for a period of seven (7) years from the retirement date of each Target Director and for the benefit of each Target Director on commercially reasonable terms which are terms acceptable to the Bidder acting reasonably. Such policy shall include a term that the policy cannot be cancelled unless the insured persons each consent to the cancellation.

9 Target Board Recommendations and Intentions

9.1 Target Board recommendation

- (a) Target must procure that the Target Public Announcement states (on the basis of written statements made to the Target by each of its Directors) that the Target Board will confirm that they unanimously consider the Scheme to be in the best interests of Shareholders subject to this agreement becoming binding and will recommend that subject to this agreement becoming binding Shareholders approve the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Shareholders.
- (b) Target must use its best endeavours to procure that the Target Board and each of the Target Directors:
 - (i) does not change or withdraw the statements and recommendations set out in the Target Public Announcement;
 - (ii) in the Scheme Booklet states that the Target Board unanimously considers the Scheme to be in the best interests of Shareholders and recommends that Shareholders approve the Scheme Resolution, in the absence of a Superior Proposal, and does not change or withdraw those statements or recommendations once made;
 - (iii) disclose and provide reasons for that recommendation in the Scheme Booklet; and
 - (iv) does not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended,subject only to the matters in clause 9.3.

9.2 Target Director recommendations and voting

- (a) Target must procure that the Target Public Announcement and the Scheme Booklet despatched to Shareholders, states (on the basis of written statements made to the Target by each of its Directors) that subject to this agreement becoming binding each Target Director who holds Shares, or who has control over voting rights attaching to Shares (including through proxies), intends to vote in favour of the Scheme, and/or procure that the Shares the voting rights of which the Target Director has control over are voted in favour of the Scheme, in the absence of a Superior Proposal subject to the Independent Expert concluding that the Scheme is in the best interests of Shareholders.

- (b) Target must use its best endeavours to procure that each Target Director who holds Shares, or who has control over voting rights attaching to Shares:
 - (i) will vote in favour of the Scheme Resolution, or procure that the Shares the voting rights of which the Target Director has control over are voted in favour of the Scheme Resolution;
 - (ii) does not change that voting intention; and
 - (iii) provide reasons for that voting intention in the Scheme Booklet,subject only to the matters in clause 9.3.

9.3 Change to Target Board recommendations or Target Director intentions

Target must use its best endeavours to procure that the Target Directors, collectively, and individually, do not withdraw or change their recommendation described in clause 9.1 or a voting intention described in clause 9.2 unless:

- (a) the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Scheme is not in the best interests of Shareholders; or
- (b) the Target Board has determined in good faith and acting reasonably, after having obtained written advice from their legal and, if appropriate, their financial advisers, that the Target Directors are by virtue of their fiduciary or statutory duties:
 - (i) no longer able to recommend to Shareholders that the Scheme be approved; or
 - (ii) no longer consider that the Scheme is in the best interests of Shareholders and accordingly are required to withdraw such recommendation,

provided that the Target Board may only withdraw or change their recommendation pursuant to this sub-paragraph (b) if Target has first made reasonable endeavours to consult with Bidder as to the matters, occurrences or events that would give rise to consideration of the withdrawal or change of recommendation; or

- (c) the Target receives a Competing Proposal that constitutes a Superior Proposal to the Scheme and Bidder decides not to exercise its matching right in accordance with clause 13.5.

10 Public announcements and Communications

10.1 Announcement of Scheme

- (a) As soon as practicable after the execution of this agreement, Target will make the Target Public Announcement.
- (b) As soon as practicable after the execution of this agreement, Bidder will make the Bidder Public Announcement.

10.2 Disclosure on termination of this agreement

Subject to clause 10.3, if this agreement is terminated under clause 15:

- (a) Target may disclose by way of announcement to ASX the fact that this agreement has been terminated; and
- (b) Bidder may disclose by way of announcement to the OMX the fact that this agreement has been terminated.

10.3 Public announcements

The parties acknowledge and agree that all public announcements in connection with this agreement (including a disclosure relating to the termination of this agreement pursuant to clause 10.2) or the Scheme, will be made subject to the terms of the Confidentiality Deed.

11 Warranties

11.1 Warranties by Bidder

Bidder warrants to Target that:

- (a) it is a corporation limited by shares and is validly existing under the laws of its place of incorporation;
- (b) it has full legal capacity and power to own its own property and to carry on its business;
- (c) it has the corporate power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (d) no Insolvency Event has occurred in respect of Bidder;
- (e) it has taken all necessary corporate action to authorise the entry into of this agreement and has taken or will take all necessary corporate action to authorise the performance of this agreement and to carry out the transactions contemplated by this agreement;
- (f) this agreement is valid and binding upon it and this agreement does not and will not result in a breach of, or default under any provision of its constitution or any term of any order, judgement or law which it is a party to or is subject to or by which it is bound or any term or provision of any material agreement to which it is a party;
- (g) the Bidder Provided Information provided to Target for inclusion in the Scheme Booklet:
 - (i) will be provided in good faith and on the understanding that Target and each of the Officers of Target will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme, and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and
 - (ii) will comply in all material respects with applicable laws including the Corporations Act, the ASX Listing Rules and the terms of this agreement as they apply to such information;
- (h) as at the date of dispatch of the Scheme Booklet to Shareholders, the Bidder Provided Information included in the Scheme Booklet is not misleading or

deceptive (including by omission of information or otherwise) in any material respect;

- (i) it will, as a continuing obligation, provide to Target all such further or new information which may arise after the Scheme Booklet is despatched until the Scheme Meeting which is necessary to ensure that the Bidder Provided Information is not misleading or deceptive in any material respect (including because of material omission);
- (j) as at 8:00am on the Second Court Date, the Bidder will have available to it on an unconditional basis (other than conditions relating to approval of the Court and other conditions within the control of the Bidder) sufficient cash amounts to satisfy the Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement and the Scheme; and
- (k) no shareholder approval of the Bidder or FLS is required to complete the Transaction.

11.2 Bidder limitation of liability

The Bidder is not liable in respect of a Warranty Claim in relation to a Bidder Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim:

- (a) was required to be done by the Bidder under the Transaction Documents;
- (b) was approved by the Target in writing (prior to the fact, matter, circumstance or act occurring);
- (c) has been fairly disclosed in writing by the Bidder to the Target prior to the date the parties entered into this agreement; or
- (d) was otherwise within the knowledge of Phil J Arnall, Patrick Largier, Stephen J. Gaffney, or Mark Day, as at the date the parties entered into the agreement.

11.3 Warranties by Target

Target warrants to Bidder that:

- (a) it and each of its Subsidiaries is a corporation limited by shares and is validly existing under the laws of its place of incorporation;
- (b) it has full legal capacity and power to own its own property and to carry on its business;
- (c) it has the corporate power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (d) no Insolvency Event has occurred in respect of Target;
- (e) it has taken all necessary corporate action to authorise the entry into of this agreement and has taken or will take all necessary corporate action to authorise the performance of this agreement and to carry out the transactions contemplated by this agreement;
- (f) this agreement is valid and binding upon it and this agreement does not and will not result in a breach of, or default under any provision of its constitution or any term of any order, judgement or law which it is a party to or is subject to or by

which it is bound or any term or provision of any material agreement to which it is a party;

- (g) Target has complied with its continuous disclosure obligations under the ASX Listing Rules and the Corporations Act and that all information that a reasonable person would expect to have a material effect (within the meaning of section 1042D of the Corporations Act) on price or value of the Shares (other than in relation to the Scheme) has been disclosed to the market and it is not withholding any information from the Bidder that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A;
- (h) having made due and reasonable enquiry, Target is not aware of any information as of the date of this agreement (other than in relation to the Scheme), which would have a material effect on the price or value of the Shares, which has not already been made generally available (as defined in section 676 of the Corporations Act) or has not been disclosed to the Bidder;
- (i) the Target Provided Information:
 - (i) will be prepared and included in the Scheme Booklet in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and
 - (ii) will comply in all material respects with applicable laws including the Corporations Act, the ASX Listing Rules and the terms of this agreement as they apply to such information;
- (j) as at the date of dispatch of the Scheme Booklet to Shareholders, the Target Provided Information included in the Scheme Booklet is not misleading or deceptive (including by the omission of information or otherwise) in any material respect;
- (k) it will, as a continuing obligation, ensure that the Scheme Booklet (but in respect of the Bidder Provided Information, subject to Bidder complying with its obligations to update the Bidder Provided Information) will be updated by all such further or new information which may arise after the Scheme Booklet is despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including because of material omission);
- (l) Schedule 2 accurately records the total number and details of Shares, Options, LTIP Rights or other securities issued by Target at the date of this agreement and, other than as disclosed in any announcement made by the Target to ASX prior to the date the parties entered into this agreement, Target has not issued, granted or agreed to issue or grant any other shares or securities convertible into shares, other than the securities referred to in Schedule 2; and
- (m) the Data Room Materials have been provided to Bidder in good faith and the Target has not knowingly:
 - (i) omitted anything from the Data Room Materials that is material to the financial position or performance of the Target's business;
 - (ii) omitted anything from the Data Room Materials such as to make any part of that information materially false or misleading; or
 - (iii) included anything materially false or misleading in the Data Room Materials.

11.4 Target limitation of liability

The Target is not liable in respect of a Warranty Claim in relation to a Target Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim or the assertion that the Target Warranty is not true and correct:

- (a) was required to be done by the Target under the Transaction Documents;
- (b) was approved by the Bidder in writing (prior to the fact, matter, circumstance or act occurring);
- (c) was fairly disclosed in any announcement made by the Target to ASX prior to the date the parties entered into this agreement;
- (d) has been fairly disclosed in the Data Room Materials; or
- (e) was otherwise within the knowledge of Christian Jepsen, Pete Flanagan, Brian Day, John Mertz, James Petruska, David Williams, Johannus Egholm, Jakob Lyngso Andersen or Kaspar Kristiansen, as at the date the parties entered into the agreement.

11.5 Bidder acknowledgements

Bidder acknowledges that:

- (a) prior to the execution of this agreement it conducted the Due Diligence Investigations and that as at the date of this agreement it is not aware, as a consequence of having conducted the Due Diligence Investigations, of any information or matter that would give it a right to terminate this agreement or would constitute a breach of any Target Warranty;
- (b) the Target Warranties are provided subject to, and are qualified by, any facts, matters or circumstances which have been fairly disclosed to the Bidder Group or its Representatives; and
- (c) subject only to any rights which Bidder has under clause 14, any breach of any Target Warranty will only give Bidder a right to terminate this agreement in accordance with clause 3.11 (and clause 15.4) and will not give rise to any other right to make any Claim against the Company in respect of a breach of a Target Warranty for damages or Loss under the law of contract, tort or otherwise and Bidder unconditionally and irrevocably waives any right which it may have otherwise had to make any such Claim.

11.6 Reliance by parties

Each party (**Warrantor**) acknowledges that:

- (a) in entering into this agreement the other party has relied on the warranties provided by the Warrantor under this clause 11; and
- (b) it has not entered into this agreement in reliance on any warranty made by or on behalf of the other party except those warranties set out in this agreement.

11.7 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the warranties given by it under this clause 11.

11.8 When warranties are given

Each representation and warranty given or made under clauses 11.1 and 11.3 is given:

- (a) as at the date of this agreement; and
- (b) as at 8.00 am on the Second Court Date,

unless the warranty is expressed to be given only at a particular time in which case it is given at that time.

12 Release

12.1 Target directors and officers

- (a) Bidder releases its rights, and agrees with Target that it will not make a Claim, against any Target Indemnified Party as at the date of this agreement in connection with:
 - (i) any breach of any representations, covenants and warranties of Target or any Target Group Member in this agreement; or
 - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will be read accordingly. Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party as trustee for each of them.
- (c) Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party as trustee for each of them.

12.2 Bidder directors and officers

- (a) Target releases its rights, and agrees with Bidder that it will not make a Claim, against any Bidder Indemnified Party as at the date of this agreement in connection with;
 - (i) any breach of any representations, covenants and warranties of Bidder or any Bidder Group Member in this agreement; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will be read accordingly.
- (c) Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party as trustee for each of them.

13 Exclusivity

13.1 No-shop restriction

- (a) During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives, directly or indirectly solicits, invites, facilitates, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any person in relation to a Competing Proposal.
- (b) Nothing in paragraph (a) prevents Target from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally.

13.2 No-talk restriction

Subject to clause 13.6, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives, negotiates or enters into, continues or participates in negotiations or discussions with any other person regarding a Competing Proposal, even if:

- (a) that person's Competing Proposal was not directly or indirectly solicited, initiated or encouraged by Target or any of its Representatives; or
- (b) that person has publicly announced their Competing Proposal.

13.3 No due diligence

Without limiting clause 13.2 but subject to clause 13.6, during the Exclusivity Period, Target must not:

- (a) solicit, initiate, facilitate or encourage any party (other than Bidder or its Representatives) to undertake due diligence on Target or its Related Bodies Corporate; or
- (b) make available to any other person (other than Bidder or its Representatives) or permit such person to receive any non-public information relating to Target or its Related Bodies Corporate.

This clause 13.3 does not prevent Target from providing information to ASX or Target's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this agreement.

13.4 Notification

During the Exclusivity Period, Target must immediately inform Bidder if Target is approached by any person to engage in any activity that would breach its obligations under clauses 13.1, 13.2 or 13.3 (or would breach its obligations under those clauses but for the operation of clause 13.6) and immediately provide in writing to Bidder:

- (a) the identity of the person; and
- (b) details of the expression of interest and/or proposal or proposed Competing Proposal made by the person making the approach and details of any discussions between such persons and Target (or its Representatives),

unless the Target Board has determined, in good faith and acting reasonably, after having obtained written advice from its legal and, if appropriate, its financial advisers that notifying Bidder would be likely to constitute a breach of the Target Directors' fiduciary or statutory obligations.

13.5 Matching right

- (a) During the Exclusivity Period, Target must not recommend a Competing Proposal, or enter into any agreement, arrangement or understanding to undertake a Competing Proposal, unless it has first:
 - (i) notified Bidder in writing of the material terms of the Competing Proposal and the person or persons proposing the Competing Proposal; and
 - (ii) given Bidder at least 3 Business Days after provision of that information in which to provide a matching or superior deal to the relevant Competing Proposal (**Bidder Counter Proposal**).
- (b) Target must use its best endeavours to procure that the Target Directors consider any Bidder Counter Proposal in good faith and, if the Target Directors determine that the terms and conditions of the Bidder Counter Proposal taken as a whole are no less favourable than those of the relevant Competing Proposal, Target and Bidder must each use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable, and Target must use its best endeavours to procure that each Target Director makes a public statement to the Shareholders recommending the Bidder Counter Proposal to the Shareholders.

13.6 Exceptions

The restrictions in clauses 13.2 and 13.3 do not apply to the extent that they restrict Target or the Target Board from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated or initiated by Target or the Target Board in contravention of clause 13.1) provided that the Target Board has determined, in good faith and acting reasonably, after having obtained written advice from its legal and, if appropriate, its financial advisers that:

- (a) the Competing Proposal is a Superior Proposal to the Scheme, or would be a Superior Proposal to the Scheme if it is proposed; and
- (b) failing to respond to such bona fide Competing Proposal would be likely to constitute a breach of the Target Directors' fiduciary or statutory obligations.

13.7 Acknowledgement

Target acknowledges that:

- (a) Bidder has required Target to agree to the obligations set out in this clause 13 in consideration of it proceeding with the Scheme and incurring significant costs in doing so; and
- (b) in the absence of obtaining these obligations from Target, Bidder would not have entered into this agreement.

14 Payments to Bidder

14.1 Payment of costs

- (a) Target believes that the Scheme will provide significant benefits to Target and its shareholders and acknowledges that Bidder has incurred and will incur significant costs, including in connection with carrying out due diligence as contemplated by the Process Agreement and this agreement and in connection with performing its obligations under the Scheme.
- (b) Bidder has requested that provisions be made in this agreement for the payments set out in clause 14.2 in the absence of which it would not have entered into this agreement.
- (c) Target:
 - (i) believes that it is appropriate to agree to the payments which it agrees to make under this clause 14 in order to secure Bidder's participation in the Scheme; and
 - (ii) acknowledges that the amount it has agreed to pay Bidder under this clause 14 is an amount which is appropriate to compensate Bidder for its reasonable external and internal costs and opportunity costs in connection with the due diligence, this agreement and the Scheme.

14.2 Payment by Target to Bidder

Target undertakes to pay Bidder \$2.2m (exclusive of GST) if:

- (a) any Target Director does not recommend the Scheme or withdraws or adversely modifies an earlier recommendation or approves or recommends or makes an announcement in support of a Competing Proposal or any other transaction that may reduce the likelihood of success of the Scheme or announces an intention to do any of these acts other than as a result of:
 - (i) a condition precedent in this agreement not being satisfied or becoming incapable of being satisfied (except for the condition precedent set out in clause 3.4(d)(ii) or where satisfaction of the condition precedent is waived by Bidder where it is entitled to do so), other than as a result of a breach by Target of any obligation it may have in this agreement in respect of ensuring those conditions precedent are satisfied; or
 - (ii) the Independent Expert failing to conclude in the Independent Expert's Report that the Scheme is in the best interests of Shareholders; or
- (b) a Competing Proposal is announced, made or becomes open for acceptance within 8 months after 23 January 2012, and under that Competing Proposal the relevant bidder:
 - (i) acquires a Relevant Interest in more than 20% of all Shares and that Competing Proposal is (or becomes) free from any defeating conditions;
 - (ii) acquires all or a substantial part of the assets of Target or the Target Group;
 - (iii) acquires control of Target, within the meaning of section 50AA of the Corporations Act; or

- (iv) otherwise acquires or merges with Target (including by way of reverse takeover bid, reverse scheme of arrangement of dual listed companies structure); or
- (c) Target is in material breach of any provision of this agreement and this agreement is terminated.

14.3 Demand for payment

- (a) If an event referred to in clause 14.2 occurs, any demand by Bidder for payment under clause 14.2 must be in writing and Target must pay the amount referred to in clause 14.2 to Bidder within 10 Business Days of receipt of the demand, failing which, the due amount shall be subject to interest of 5% above the 1 Month EURIBOR interest rate from the 10 Business Day after Bidder's demand was made, until payment has been received by Bidder.
- (b) Subject to clause 14.3(c), Bidder acknowledges and agrees that if an amount is paid to it under clause 14.2, that payment constitutes its sole and exclusive remedy in respect of the matter giving rise to the payment.
- (c) If an event provided for in clause 14.2(c) leads to the Scheme not being implemented and the relevant breach is a wilful or deliberate breach by Target or arises as a result of the gross negligence of Target, Bidder shall be entitled to claim for damages for any direct Losses incurred by Bidder in excess of the payment made under clause 14.2.
- (d) Subject to claims referred to in clause 14.3(c) above, the maximum amount which may be recovered in respect to the events referred to in clause 14.2 of this agreement, is \$2.2 million.

15 Termination

15.1 Termination by either party

Either the Target or the Bidder may terminate this agreement by notice to the other:

- (a) in accordance with clause 3.11;
- (b) after the End Date, if the Effective Date for the Scheme has not occurred on or before that date;
- (c) before 8am on the Second Court Date if the other party (the **Defaulting Party**) is in breach of this agreement and:
 - (i) that breach is material and cannot be remedied; or
 - (ii) that breach is material and the Defaulting Party has been given notice of the breach and the intention to terminate this agreement if the breach is not remedied and the breach is not remedied within 5 Business Days (or such shorter period ending at midnight at the end of the day before the Second Court Date) of receiving notice from the other party to remedy that breach; and
- (d) before 8.00am on the Second Court Date if a Court or Governmental Agency has taken any action permanently restraining or otherwise prohibiting the Scheme, or has refused to do anything necessary to permit the Scheme, and the action or refusal has become final and cannot be appealed.

15.2 Termination by Bidder

Bidder may terminate this agreement by notice in writing to Target at any time before 8am on the Second Court Date if any Target Director or the Target Board:

- (a) publicly changes (including by attaching qualifications to) or withdraws (including by abstaining) their statement that they consider the Scheme to be in the best interests of Shareholders or their recommendation that Shareholders approve the Scheme;
- (b) publicly recommends, promotes or otherwise endorses a Competing Proposal, whether or not in accordance with clause 9.1(b); or
- (c) publicly states an intention to change their voting intention in respect of any relevant Director Shares whether or not in accordance with clause 9.3.

15.3 Termination by Target

- (a) Target may terminate this agreement at any time before 8:00am on the Second Court Date by notice in writing to Bidder if, in accordance with clause 9.3, the Target Board (or a majority of the Target Directors) withdraw or change their recommendation described in clause 9.1(a).

15.4 Effect of termination

In the event of termination of this Agreement by either Bidder or Target pursuant to clause 15.1, 15.2 or 15.3, this agreement will have no further force or effect and the parties will have no further obligations under this agreement, provided that:

- (a) this clause 15 and clauses 1, 8.4, 10.2, 14, 16, 17, 18, 19, 20, 21 and 22 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this agreement.

16 GST exclusive

- (a) Any consideration or amount payable under this agreement, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount (**Additional Amount**) is payable by the party providing the Consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, subject to the provision of a valid Tax Invoice at or before that time. If a valid Tax Invoice is not provided at or before that time then the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply made under or in connection with the agreement (taking into account any Decreasing or Increasing Adjustments in

relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16(b):

- (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this agreement if an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be **reduced by the amount** of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of the GST Group of which that party is a Member is entitled.

17 Stamp duty and costs

- (a) Bidder will bear all stamp duty payable in respect of this agreement, the Scheme and any agreement or document that is brought into existence for the purpose of the Scheme.
- (b) Except as otherwise provided in this agreement, each party must pay its own costs of negotiating, preparing, executing and performing this agreement and the Scheme Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.

18 Notices

- (a) A notice, consent, request or any other communication under this agreement must be in writing and must be left at the address of the addressee, or sent by prepaid post (airmail if posted to or from a place outside Australia) or by email to the mail or email address of the addressee specified below or any other mail or email address the addressee requests.

Target

Attention: Mark Day
Address: 67 Randle Road, Pinkenba, QLD 4008 Australia
Email: m.day@ludowici.com.au

Copy Gilbert + Tobin
Attention Peter Cook and Rachael Bassil

Email pcook@gtlaw.com.au and rbassil@gtlaw.com.au

Bidder:

Attention: Johannus Egholm Hansen
Address: Vigerslav Alle 77, DK-2500 Valby, Denmark
Email: joeh@flsmidth.com

Copy Blake Dawson
Attention Sarah Dulhunty and David McManus
Email Sarah.Dulhunty@blakedawson.com and
David.McManus@blakedawson.com

- (b) A notice, consent, request or any other communication is taken to be received:
- (i) if by delivery, when it is delivered unless it is delivered on a day other than a business day in the place of receipt in which case it is taken to be received at 9.00 am on the next business day in the place of receipt;
 - (ii) if by post, 3 days after posting; and
 - (iii) if by email, when the sender receives confirmation on its server that the message has been transmitted.

19 General

19.1 Cumulative Rights

The rights, powers and remedies of a party under this agreement are cumulative with the rights, powers or remedies provided by law independently of this agreement.

19.2 Waiver and variation

- (a) A provision or a right under this agreement may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by each of the parties.
- (b) No other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.
- (d) The exercise of a right does not prevent any further exercise of that right or of any other right.

19.3 Approvals and consents

A party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this agreement states otherwise. Any approval or consent or agreement required pursuant to this agreement must be in writing.

19.4 Specific Performance

The parties acknowledge that monetary damages alone would not be adequate compensation for a breach by any party of an obligation under this agreement and that specific performance of that obligation is an appropriate remedy.

19.5 Effect of agreement

- (a) Prior to the satisfaction of the condition in clause 3.1(a), unless otherwise agreed by the parties in writing:
 - (i) this agreement, the Process Agreement and the Confidentiality Deed contain the entire agreement between the parties about its subject matter; and
 - (ii) this agreement, the Process Agreement and the Confidentiality Deed supersede any previous understanding, agreement, representation or warranty between the parties concerning the subject matter of this agreement.
- (b) Following the satisfaction of the condition in clause 3.1(a), unless otherwise agreed by the parties in writing:
 - (i) this agreement and the Confidentiality Deed will contain the entire agreement between the parties about its subject matter; and
 - (ii) this agreement and the Confidentiality Deed will supersede any previous understanding, agreement, representation or warranty between the parties concerning the subject matter of this agreement.

19.6 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

19.7 Mutual Further Assurances

Each party must do all things necessary or expedient to be done by it in connection with the matters referred to in this agreement.

19.8 No partnership or agency

Nothing in this agreement is to be treated as creating a partnership and, except as specifically provided in this agreement, no party may act as agent of or in any way bind another party to any obligation.

19.9 Clauses benefiting third parties

If a provision of this agreement is expressed to be for the benefit of a person such as a Scheme Participant that is not a party to this agreement (**third party**), the party to this agreement that receives that promise and any permitted assignee of that party (**promisee**):

- (a) does so not only in its own capacity but also as trustee for the third party;
- (b) must permit the third party to enforce the provision in the promisee's name on giving full indemnity and any reasonable security the promise requires;
- (c) assumes no other duty or liability whatever to the third party such as to inform the third party of anything, to supervise, to monitor or to claim anything; and
- (d) may revoke the trust or vary or cancel the provision as it sees fit without the consent of and without having regard to the interests of or being responsible for any detriment to any third party.

19.10 No merger

No provisions of this agreement merge on implementation of the Scheme.

19.11 Inconsistency with other documents

If this agreement is inconsistent with any other document or agreement between the parties, this agreement prevails to the extent of the inconsistency.

20 Counterparts

This agreement may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.

21 Governing law and jurisdiction

This agreement is governed by the laws of Queensland, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place.

22 Assignment

The rights and obligations of each party under this agreement are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other party.

Schedule 1 — Dictionary

1 Dictionary

In this agreement:

Adviser means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged or employed by that entity.

Agreed Form means in relation to any document, such document in the form agreed between the Bidder and Target, such agreement not to be unreasonably withheld or delayed.

Announcement Date means:

- (a) the date on which this agreement is executed; or
- (b) if this agreement is executed on a day that is not a Trading Day, the first Trading Day immediately following the day of execution.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market operated by it being the Australian Securities Exchange.

ASX Listing Rules means the official listing rules of the ASX.

Australian Business Day means a business day as defined in ASX Listing Rules.

Bidder means FLSmidth Pty Limited ACN 000 221 590 of 5 Comserv Close, West Gosford, New South Wales 2250, Australia.

Bidder Group means FLS and each of its Related Bodies Corporate.

Bidder Group Member means each member of the Bidder Group.

Bidder Indemnified Parties means Bidder, its Related Bodies Corporate, and all of their respective Officers.

Bidder Provided Information means all written information regarding the Bidder Group that is provided by or on behalf of Bidder to Target or any of its Representatives or the Independent Expert to enable the Scheme Booklet to be prepared and completed in accordance with clause 6.3 (and that is specifically identified as such by Bidder or any of its Representatives), and any updates to that information provided by or on behalf of Bidder to Target or any of its Representatives in accordance with clause 6.2(g).

Bidder Public Announcement means the public announcement to be made by Bidder in the form of Attachment E.

Bidder Warranty means each warranty of Bidder set out in clause 11.1.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Copenhagen and Brisbane.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Competing Proposal means any proposal (including a scheme of arrangement) or offer that would if completed substantially in accordance with its terms result in any person or persons other than Bidder or its Related Bodies Corporate acquiring (directly or indirectly):

- (a) an interest in all or a substantial part of the assets of Target or the Target Group;
- (c) a Relevant Interest in more than 20% of the issued Shares, other than an acquisition in reliance on section 611, item 9 of the Corporations Act;
- (d) control of Target within the meaning of section 50AA of the Corporations Act; or
- (e) otherwise acquiring or merging with Target (including by way of reverse takeover, reverse scheme of arrangement or dual listed company structure).

Conditions Precedent means the conditions precedent set out in clauses 3.3 and 3.4 of this agreement.

Confidentiality Deed means the Confidentiality Deed dated 19 January 2012 between Target and FLS and any amendments to that deed including the Deed of Amendment dated 23 January 2012 between the same parties.

Confidential Information has the same meaning as it has in the Confidentiality Deed.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as agreed by the parties.

Data Room Materials means all documents and information that were at any time up to 10.00am (Sydney time) on the date of this agreement contained in the online data room maintained for Target by Ansarada and made available to Bidder and its Representatives and other written and verbal information given by the Target and its Representatives to the Bidder or any of its Representatives at any time up to the date of this agreement.

Deed Poll means a deed poll to be executed by Bidder in favour of the Scheme Participants substantially in the form of Attachment C (or in such other form as Bidder and Target may agree in writing, such agreement not to be unreasonably withheld or delayed).

Due Diligence Investigations means the due diligence investigations which Bidder Group has conducted in relation to Target Group pursuant to the terms of the Process Agreement.

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim or any other security arrangement or any other arrangement having the same effect.

End Date means 31 December 2012, or such later date as Bidder and Target may agree in writing.

Exclusivity Period means the period commencing on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement in accordance with its terms;
- (b) the Effective Date; and
- (c) the End Date.

Explanatory Statement means an explanatory statement pursuant to section 412 of the Corporations Act in relation to the Scheme which will be registered by ASIC, a copy of which will be included in the Scheme Booklet.

Family Shareholders means Julian Ludowici and Ludowici Investments Pty Limited ACN 008 415 398.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Financier means HSBC Bank Australia Limited.

First Court Date means the first day of hearing of an application made to the Court by Target for orders, pursuant to section 411(1) of the *Corporations Act*, convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

FLS means FLSmidth & Co. A/S of Vigerslev Alle 77, DK-2500 Valby, Denmark.

Governmental Agency means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local, including ASIC, the Takeovers Panel, OMX and ASX (and any other relevant stock exchange) and any self-regulatory organisation established under statute, by ASX or by OMX.

GST means a goods and services tax or similar value added tax levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation Date means the fifth Australian Business Day after the Record Date, or such other date as:

- (a) the parties may agree in writing;
- (a) ordered by the Court; or
- (b) may be required by ASX.

Independent Expert means an independent expert to be engaged by Target in accordance with clause 6.1(c) to express an opinion on whether the Scheme is in the best interests of Shareholders in accordance with the Corporations Act and ASIC policy and practice.

Independent Expert's Report means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b) the person resolving to appoint a controller or analogous person to the person or any of the person's property;
- (c) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
- (d) an appointment of the kind referred to in subparagraph (c) being made (whether or not following a resolution or application);
- (e) the holder of a security interest, or any agent on its behalf, appointing a controller or taking possession of any of the person's property;
- (f) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) an application being made to a court for an order for its winding up;
- (h) an order being made, or the person passing a resolution, for its winding up;
- (i) the person:
 - (ii) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (iii) being unable to pay its debts or otherwise insolvent; or
- (j) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property, except if deriving out of the party's ordinary course of business; or
- (k) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Bidder.

Losses means all Claims, demands, damages, losses, costs, expenses and liabilities (including but not limited to all legal costs and attorney's fees on a full indemnity basis).

LTIP Rights means the rights granted under the Long Term Incentive Plan and approved at Target's 2011 AGM as set out in part 3 of Schedule 3.

Material Adverse Effect, in relation to Target, means any specific or series of related events, matters or circumstance which have had or would with the lapse of time

reasonably be expected to have a material adverse effect on the structure, business, assets, liabilities, operations, financial or trading position or performance of Target and its Subsidiaries, taken as a whole, in the reasonable opinion of Bidder, acting in good faith.

Officer means, in relation to an entity, its directors, officers and employees.

OMX means Nasdaq OMX Copenhagen A/S.

Options means options to acquire a Share issued under the "Ludowici Limited Executive Share and Option Plan" as set out in part 2 of Schedule 3.

Options and Rights Deed means the options and rights deed to be executed by Bidder, Target and Patrick Largier substantially in the form attached as Attachment F.

Ordinary Dividend means a fully franked ordinary dividend of up to \$0.20 per Share, the payment of which must not result in Target being in franking credit deficit immediately after paying the Ordinary Dividend.

Proceedings means the Takeovers Panel proceedings relating to The Weir Group Plc's application lodged with the Takeovers Panel on 13 February 2012.

Process Agreement means that process agreement dated 23 January 2012 between Target and Bidder.

Record Date means 7.00pm on the fifth Australian Business Day following the date on which the Scheme becomes Effective, or any other date agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Register means the register of Shareholders kept by Target and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet which is provided to ASIC pursuant to section 411(2) of the Corporations Act.

Regulatory Approvals means any approval of a Government Agency or merger control authority which is necessary to implement the Transaction or Scheme.

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Interest has the same meaning as given by sections 608 and 609 of the Corporations Act.

Representative means, in relation to a party:

- (a) a Related Body Corporate;
- (b) an Officer of the party or any of the party's Related Bodies Corporate; and
- (c) an Adviser to the party or any of the party's Related Bodies Corporate.

Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Target and the Scheme Participants, on the terms described in Attachment B, together with any alterations or conditions made or required pursuant to sub-section 411(6) of the Corporations Act and agreed or consented to in writing by Target and Bidder.

Scheme Booklet means the information memorandum prepared by Target in relation to the Scheme to be approved by the Court and to be despatched to all Shareholders, which complies with the requirements of the Corporations Act and the relevant guidelines of ASIC and which incorporates the Scheme, the Independent Expert's Report, the Explanatory Statement and relevant notices of any meetings, including the Scheme Meeting, and proxy forms.

Scheme Consideration has the meaning given to that expression in clause 4.2(a).

Scheme Meeting means the meeting or meetings of Shareholders ordered by the Court in relation to the Scheme to be convened pursuant to Section 411(1) of the Corporations Act.

Scheme Orders means the orders of the Court made for the purposes of section 411(4)(b) of the Corporations Act in relation to the Scheme.

Scheme Participant means each Shareholder on the Record Date (taking into account registration of all registrable transfers and transmission applications received at Target's share registry by the Record Date).

Scheme Resolution means the resolution to be put to Shareholders to approve the Scheme.

Scheme Shares means the Shares on issue as at the Record Date.

Second Court Date means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned or subject to appeal for any reason, means the first day on which the adjourned or appealed application is heard.

Share means an issued fully paid ordinary share in the capital of Target.

Shareholders means each person who is registered in the Register as the holder of Shares.

Special Dividend has the meaning given in clause 5.1.

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a bona fide Competing Proposal that is received by the Target and which the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (and after having taken advice from its financial and legal advisers):

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions precedent, and the person making it; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Shareholders (as a whole) than the Scheme, taking into account all the terms and conditions of the Competing Proposal and all aspects of the Scheme.

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Target means Ludowici Limited ACN 000 001 365 of 67 Randle Road, Pinkenba, Queensland, Australia.

Target Board means the board of directors of Target from time to time.

Target Director means a director of Target.

Target Group means Target and its Related Bodies Corporate.

Target Indemnified Parties means Target, its Related Bodies Corporate and all of their respective Officers.

Target Material Transaction means a transaction entered into by Target or a subsidiary that:

- (a) is not in the ordinary course of business and:
 - (i) in relation to sub-clauses (c) to (h) in this definition of Target Material Transaction, has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$500,000 or more, or when aggregated with related transactions, \$500,000 or more; or
 - (ii) in relation to sub-clauses (i) to (k) in this definition of Target Material Transaction, has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$50,000 or more, or when aggregated with related transactions, \$50,000 or more; or
- (b) has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$2.5 million or more, or when aggregated with related transactions, \$2.5 million or more,

and which (in respect of (a) or (b)) transaction is:

- (c) an acquisition, offer to acquire or agreement to acquire any asset or interest in an asset (excluding any acquisition for which there exists a binding agreement as at the date of this agreement and which has been disclosed to Bidder in writing prior to the execution of this agreement);
- (d) a disposal, offer to dispose or agreement to dispose of any asset or interest in an asset (excluding any disposal for which there exists a binding agreement as at the date of this agreement which has been disclosed to Bidder in writing prior to the execution of this agreement);
- (e) a joint venture or partnership in respect of any asset or undertaking;
- (f) the entering into, termination, extension, renewal or variation of any commitment (including any non-contractual commitment or undertaking);
- (g) the entering into any new debt or loan agreements (which, for the avoidance of doubt, does not include drawing down on existing finance facilities in the ordinary course of business);
- (h) an exercise of a contractual right or other option to renew or extend, or otherwise renewing or extending, an existing agreement (including under any lease);
- (i) a variation of the employment arrangements of any of its directors or employees with the effect of increasing the remuneration, including but not limited to bonuses, incentives, severance pay and pensions contribution, of the director or employee, or changing the notice period or terminating the employment of, the director or employee;

- (j) the acceleration of the rights of any of its directors or employees to compensation or benefits of any kind (including under any executive or employee share plans) other than in respect of the Options or the LTIP Rights as a result of the Transaction;
- (k) the payment of any bonus, termination or retention payment to any of its directors or employees other than in accordance with a contract in place at the date of this agreement; or
- (l) a new contract of employment under which the annual remuneration of the director or employee is \$200,000 or more,

other than:

- (m) in respect of (a) and (b), pursuant to an existing contractual obligation as at the date of this agreement, with Bidder's prior written consent (such consent not to be unreasonably withheld); and
- (n) in respect of (b), the entry into, variation, renewal or extension of a customer contract in the ordinary course of business and on terms that Target, acting reasonably, considers to be normal commercial terms.

Target Prescribed Event means the occurrence of the following (other than any matter consented to in writing by Bidder) after the date of this agreement:

- (a) Target converts all or any of the Shares into a larger or smaller number of shares;
- (b) Target or a Subsidiary of Target resolves to reduce its share capital in any way or reclassifies, combines, splits, redeems or repurchases directly or indirectly any of its shares;
- (c) Target or a Subsidiary of Target enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Target or a Subsidiary of Target issues or authorises the issue of shares or other instruments convertible into, in lieu of or in substitution for shares, or grants an option over its shares, or agrees to make such an issue or grant such an option, excluding any Shares issued by Target as a result of the exercise of the Options or the vesting of the LTIP Rights;
- (e) Target or a Subsidiary of Target creates, or agrees to create, any mortgage, charge, lien or other Encumbrance over the whole or a substantial part of the business, assets or property of the Target Group;
- (f) an Insolvency Event occurs in relation to Target or a Subsidiary of Target;
- (g) Target or a Subsidiary states its intention to or makes any change to its constitution;
- (h) Target declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets other than the Ordinary Dividend and the Special Dividend; and
- (i) Target or a Subsidiary of Target waives, forgoes or otherwise fails to seek the enforcement of any debt or other liability owed to it by any other entity of an amount greater than \$2.5 million in aggregate (or, in the case of a related party of Target or of any Shareholder with a substantial holding, any amount whatsoever).

Target Provided Information means all written information included in the Scheme Booklet and all information provided by or on behalf of the Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed, and any updates to that information prepared by or on behalf of Target in accordance with clause 6.1(j), other than the Bidder Provided Information and the Independent Expert's Report.

Target Public Announcement means the public announcement to be made by Target in the form of Attachment D.

Target Shareholder Approval means the approval of the Scheme Resolution by the required majority of Shareholders under and in accordance with section 411(4)(a)(ii) of the Corporations Act.

Target Warranty means each warranty of Target set out in clause 11.2.

Tax means any federal or state tax (including duty) imposed in or outside Australia and includes capital gains tax, fringe benefits tax, income tax, superannuation guarantee charge, sales tax, goods and services tax, land tax, property tax, pay-as-you-earn, pay-as-you-go or other like withholding tax, customs duty, payroll tax, stamp duty, withholding tax, interest, or fine, penalty, charge, fee or other amount imposed in respect of the above, assessed, levied, imposed or collected by any Tax Authority.

Tax Authority means any federal or state tax regulatory authority or any sub-division, agency, commission or authority of such authorities responsible for the collection of any Tax or administration of any Tax Law.

Tax Law means any law (including principles of law or equity established by decisions of courts) that applies to any Tax including any rule, regulation, ordinance, order, by-law, local law, statutory instrument, control, restriction, direction or notice made under any law by any Government Agency or Tax Authority.

Timetable means the indicative timetable for the implementation of the Scheme a copy of which is Attachment A to this agreement.

Transaction means the proposed transactions pursuant to which Bidder will acquire the Scheme Shares under the Scheme, in consideration for the provision of the Scheme Consideration and any action to be undertaken pursuant to, or in connection with, a Transaction Document.

Transaction Documents means:

- (a) this agreement;
- (b) the Scheme;
- (c) the Deed Poll; and
- (d) any other document, in the Agreed Form, which the Bidder and the Target agree is necessary or desirable to be entered into for the purposes of the Scheme.

Warranty Claim means any Claim by a party arising out of a breach of a Target Warranty or Bidder Warranty (as applicable).

2 Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
 - (vi) this agreement includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable financial market on which a company's securities may be traded and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this agreement, the relevant time of day is the time in Sydney, Australia;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;

- (k) a reference to the Scheme Meeting includes any adjournment thereof;
- (l) a reference to “fair disclosure” or “fairly disclosed” means disclosure in sufficient detail to allow the Bidder (acting reasonably) to identify the nature and effect of the matter disclosed.
- (m) Any provision of this agreement which requires a party to use best endeavours, reasonable endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur, does not include any obligation to:
 - (i) commence any legal action or proceeding against any person; or
 - (ii) pay an amount of money to or for the benefit of any third party:
 - (A) in the form of an inducement or consideration to a third party to procure something other than the payment of reasonable expenses or costs and costs of advisers to procure the relevant thing; or
 - (B) in circumstances that are commercially onerous or unreasonable in the context of this agreement,except where that provision expressly specifies otherwise.
- (n) A listing rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this agreement.

Schedule 2 — Responsibility Statements

- (a) Except as provided in paragraphs (b) and (c) below, the information in this Scheme Booklet has been provided by Target and is the responsibility of Target. Bidder and its directors, officers and advisors do not assume any responsibility for the accuracy or completeness of any such Target information.
- (b) Bidder has provided and is responsible for information contained in sections *[insert]* of this Scheme Booklet, including information as to the funding arrangements it has made to provide the Scheme Consideration, and information as to Bidder's opinions, views, intentions and decisions in relation to Target (collectively the **Bidder Information**). Target and its directors, officers and advisors do not assume any responsibility for the accuracy or completeness of the Bidder Information.
- (c) The Independent Expert, *[insert]*, has provided and is responsible for the information contained in section *[insert]* of this Scheme Booklet. Neither Target nor the Bidder assumes any responsibility for the accuracy or completeness of the information contained in section *[insert]*. The Independent Expert does not assume any responsibility for the accuracy or completeness of the information contained in this Scheme Booklet other than that contained in section *[insert]*.

Schedule 3 – Options and LTIP Rights

Part 1 – Shares

| Quantity | Type |
|------------|----------------------------|
| 29,473,203 | Fully paid ordinary shares |

Part 2 – Options

| Quantity | Type | Exercise price | Vesting Date |
|----------|---------|----------------|---------------------------------------------------------------------------------------------------|
| 375,000 | Options | \$6.70 | 25.02.11 |
| 150,000 | Options | \$2.40 | The date on which the financial accounts for the year ending 31 December 2011 are lodged with ASX |
| 150,000 | Options | \$2.63 | The date on which the financial accounts for the year ending 31 December 2012 are lodged with ASX |

Part 3 – LTIP Rights

| Quantity | Type | Exercise price | Vesting Date |
|----------|-------------|----------------|-----------------------|
| 150,000 | LTIP Rights | Nil | 28.02.14 ¹ |
| 100,000 | LTIP Rights | Nil | 28.02.15 ² |

¹ Subject to performance hurdles.

² Subject to performance hurdles.

Execution page

Executed as an agreement.

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Signed for **Ludovici Limited** by:

Signature of director

Patrick John Largier

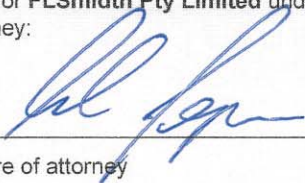
Name of director (print)

Signature of ~~director~~/secretary

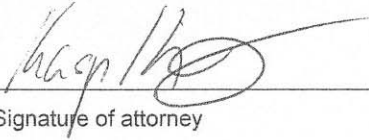
MARK DAY

Name of ~~director~~/secretary (print)

Signed for **FLSmidth Pty Limited** under a power
of attorney:



Signature of attorney



Signature of attorney

Christian Jepsen

Name of attorney (print)

Kaspar Ronald Kristiansen

Name of attorney (print)

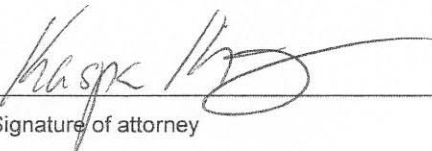
15 February 2012

Date of power of attorney

Signed for **FLSmidth & Co A/S** by:



Signature



Signature of attorney

Christian Jepsen, Group Executive Vice
President

Name

Kaspar Ronald Kristiansen

Name of attorney (print)

15 February 2012

Date of power of attorney