

**COMPLETED ACQUISITION BY IMERYS MINERALS LIMITED OF
THE KAOLIN BUSINESS OF GOONVEAN LIMITED**

**Notice of acceptance of Undertakings pursuant to section 82 of and
Schedule 10 to the Enterprise Act 2002**

On 3 April 2013, the Office of Fair Trading made a reference to the Competition Commission (CC) under section 22(1) of the Enterprise Act (the Act) concerning the completed acquisition by Imerys Minerals Limited (Imerys Minerals), a subsidiary of Imerys S.A. and Imerys UK Limited (Imerys UK) (together, Imerys), of the kaolin business of Goonvean Limited (Goonvean).

In its report, *Imerys Minerals Limited and Goonvean Limited: A report on the completed acquisition by Imerys Minerals Limited of the kaolin business of Goonvean Limited* (the Report) dated 10 October 2013, the CC concluded that:

- (i) the completed acquisition by Imerys Minerals of the kaolin business of Goonvean had resulted in the creation of a relevant merger situation;
- (ii) the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the market for the supply of kaolin for performance-mineral applications in the UK;
- (iii) the CC should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CC to give effect to the remedy identified by the CC in Section 9 and Appendix N of the Report.

The CC published a notice of proposal to accept final undertakings (the Undertakings) on 19 November 2013. The CC has considered the representations received and made some minor amendments to the Undertakings. The CC has decided to accept the Undertakings attached to this Notice.

The CC under section 82 of the Act now accepts the Undertakings as given by Imerys. The reference has been finally determined and the Undertakings come into force accordingly.

This Notice and a non-confidential version of the Undertakings will be published on the CC website. The CC has excluded from the non-confidential version of the Undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [X].

(signed) SIMON POLITO
Group Chairman and Deputy Chairman
19 December 2013

COMPLETED ACQUISITION BY IMERYS MINERALS LIMITED OF THE KAOLIN BUSINESS OF GOONVEAN LIMITED

Undertakings given to the Competition Commission by Imerys S.A., Imerys UK Limited and Imerys Minerals Limited

Background

On 3 April 2013, the Office of Fair Trading (OFT) made a reference (the reference) to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Imerys Minerals Limited (Imerys Minerals), a subsidiary of Imerys S.A. and Imerys UK Limited (Imerys UK) (together, Imerys), of Goonvean Limited (Goonvean) (the Acquisition).

On 8 April 2013, the CC adopted the undertakings accepted by the OFT on 14 December 2012 and the associated consents pursuant to section 80(3) of the Act for the purpose of ensuring that no action was taken pending the determination of the reference which might prejudice the reference or impeded the taking of any action by the CC under Part 3 of the Act (the Interim Undertakings).

The Interim Undertakings cease to be in force on the date of acceptance by the CC of these Undertakings pursuant to section 82 of the Act.

The CC published its report entitled Imerys Minerals Limited and Goonvean Limited, a report on the completed acquisition by Imerys Minerals Limited of the kaolin business of Goonvean Limited on 10 October 2013 (the Report).

In the Report, the CC concluded that:

- (i) the completed acquisition by Imerys Minerals of the kaolin business of Goonvean had resulted in the creation of a relevant merger situation;
- (ii) the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the market for the supply of kaolin for performance-mineral applications in the UK;
- (iii) the CC should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CC to give effect to the remedy identified by the CC in Section 9 and Appendix N of the Report.

Now therefore, each of Imerys S.A., Imerys UK and Imerys Minerals gives to the CC the following Undertakings pursuant to section 82 of the Act for the purpose of remedying the SLC identified in the Report and any adverse effects which flow from it.

1. Interpretation

- 1.1 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 1.2 The appendices form part of these Undertakings.

- 1.3 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.
- 1.4 Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 1.5 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 1.6 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 1.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.8 References to recitals, paragraphs, subparagraphs and appendices are references to the recitals to, paragraphs and subparagraphs of, and appendices to, these Undertakings.
- 1.9 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include corporations.
- 1.10 Further, in these Undertakings:

'Act' means the Enterprise Act 2002;

'Appendix' means an appendix to the Undertakings;

'Base Fuel Price' means the fuel price agreed between Imerys and its third party haulier before taking account of any variations in accordance with the Fuel Variation Clause;

'CC' means the Competition Commission, provided that, after 1 April 2014, references to the CC in these Undertakings shall be taken as references to the CMA unless otherwise expressly provided;

'CMA' means the Competition and Markets Authority which was established on 1 October 2013 under the Enterprise and Regulatory Reform Act 2013 and to which certain functions of the OFT and the CC will transfer on 1 April 2014 and all references to the CC and the OFT, shall, after 1 April 2014, be construed as meaning references to the CMA;

'Compliance Director' means the person appointed pursuant to paragraph 9.6 of these Undertakings;

'Commencement Date' means the date on which these Undertakings are accepted by the CC;

'Customer' means the customer of each Price Controlled Product as set out in the relevant column of Appendix 1 and Appendix 2;

'Customer Site' means the location to which each Price Controlled Product that is not supplied on an ex-works basis is delivered as set out in the relevant column of Appendix 1 and Appendix 2;

'Delivered Price' means the Ex-Works Price plus any applicable Delivery Cost of each Price Controlled Product;

'Delivery Cost' means the third party costs per unit tonne of delivering each Price Controlled Product as set out in the relevant column of Appendix 1 and Appendix 2 (in respect of deliveries of Price Controlled Products made in 2013) and as determined in accordance with paragraphs 4.1 to 4.10 as appropriate for deliveries in 2014 to 2018 inclusive;

'Dispatched' means Imerys sending the Price Controlled Product to the Customer and the Dispatch Date is the day on which the Price Controlled Product leaves Imerys's property for onward delivery to the Customer;

'Dispute' has the meaning given in paragraph 6.2 and each Dispute shall be resolved in accordance with the Dispute Resolution Scheme;

'Dispute Notice' has the meaning given in paragraph 6.3 and the form of Dispute Notice is set out in Annex A to the Dispute Resolution Scheme;

'Dispute Resolution Scheme' means the scheme set out in Appendix 6, as may be amended from time to time in accordance with paragraph 6.4;

'Ex-Works Price' means the ex-works price per unit tonne (exclusive of VAT) for each Price Controlled Product as set out in the relevant column of Appendix 1 and Appendix 2 and as varied in accordance with these Undertakings;

'Fuel Variance Clause' means a clause in a contract Imerys has with a third party haulier in which haulage costs may vary where fuel prices diverge by more than a certain percentage from a Base Fuel Price specified in that contract;

'Goonvean' means Goonvean Limited (Company no. 258625);

'Identified Alternative Grade' has the meaning given in paragraph 5.8;

'Imerys Minerals' means Imerys Minerals Limited (Company no. 269255), registered office Par Moor Centre, Par Moor Road, Par, Cornwall, PL24 2SQ;

'Imerys' means each of Imerys S.A., Imerys UK and Imerys Minerals, and any other Subsidiary of Imerys S.A. for the time being and shall also be known as the **'Imerys Group'**;

'Imerys UK' means Imerys UK Limited (Company no. 03674799);

'Incoterm' means the rules set out in the Incoterms 2010, as published by the International Chamber of Commerce, as amended from time to time;

'Independent Expert' means, in relation to each Dispute, the persons appointed in accordance with paragraphs 13 to 18 of the Dispute Resolution Scheme;

'Initial Grade' means the following Imerys and Goonvean grades, which conform to the product specification sheets set out in Appendix 9:

- Imerys's Speswhite, Polwhite B, Polwhite E, Devolite and Polsperser 50; and
- Goonvean's Crystal Sheen, Opal Alpha, Opal Beta, Opal Gamma, Opal Epsilon and Opal Rho;

'Initial Terms and Conditions' means:

- for each Imerys Price Controlled Product, the Imerys Minerals terms and conditions set out at Appendix 3; and
- for each Goonvean Price Controlled Product, the Goonvean terms and conditions set out at Appendix 4;

in each case subject to any alternative or supplementary terms and conditions agreed between Imerys or Goonvean and a Customer as at the Commencement Date and where the Initial Terms and Conditions are amended to reflect the terms of these Undertakings;

'Instructions' has the meaning given in paragraph 9 and 11 of Appendix 6;

'Maximum Annual Volume' means in relation to each Price Controlled Product, the maximum volume in tonnes set out in the relevant column of Appendix 1 and Appendix 2, which represents the highest annual UK purchase volume of that Price Controlled Product in 2009/10, 2010/11 and 2011/12 plus 10 per cent, as varied in accordance with these Undertakings;

'Non-Standard Materials' has the meaning given in paragraph 5.5;

'OFT' means the Office of Fair Trading, provided that, after 1 April 2014, references to the OFT in these undertakings shall be taken as references to the CMA unless otherwise expressly provided;

'Packaging' means the packaging in which each Price Controlled Product is supplied as set out in the relevant column of Appendix 1 and Appendix 2;

'Party' means, in relation to a Dispute, each of Imerys and the Customer;

'Payload' means the volume in tonnes of each Price Controlled Product that is supplied in a single delivery as set out in the relevant column of Appendix 1 and Appendix 2;

'Performance-Mineral Application' means the market in which the CC found an SLC in accordance with paragraph 7.128 of the Report;

'Price Cap' has the meaning given in paragraph 3.3;

'Price Controlled Product' means each combination of Initial Grade (or Suitable Alternative Grade), Customer, Customer Site, Packaging, Payload and Maximum Annual Volume set out in the relevant columns of Appendix 1 (each an **'Imerys Price Controlled Product'**) and Appendix 2 (each a **'Goonvean Price Controlled Product'**) and as varied in accordance with these Undertakings.

'Price Negotiations' mean the negotiations Imerys has with the Customer in advance of concluding a supply agreement for a Price Controlled Product;

'Quotation' has the meaning given in paragraph 12 of Appendix 6;

'Reformulation Work' has the meaning given in paragraph 5.3;

'Report' means the report of the CC entitled *Imerys Minerals Limited and Goonvean Limited*, issued on 10 October 2013;

'RPI Index' means the All Items Retail Prices Index published by the Office for National Statistics (or equivalent index published by any successor organization);

'SLC' means a substantial lessening of competition pursuant to section 22 of the Act;

'Subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'Suitability Notice' has the meaning given in paragraph 5.8;

'Suitable Alternative Grade' means, in relation to each Price Controlled Product, an alternative kaolin grade which is a suitable alternative to the Initial Grade forming part of that Price Controlled Product for the relevant application in which it is used by the Customer, and which is supplied in accordance with paragraph 5.10;

'Surcharge' means any energy or other charge added to the sale price of a Price Controlled Product as referred to in paragraph 3.4;

'Termination Date' means in relation to each Price Controlled Product, 31 December 2018 or any earlier date in accordance with paragraph 12.1;

'Transition Date' has the meaning given in paragraph 5.1;

'Transition Notice' has the meaning given in paragraph 5.1 and the form of Transition Notice is set out in Appendix 5;

'Undertakings' means these Undertakings and the appendices (each as amended from time to time);

'Working Day' means a day other than a Saturday or Sunday or a public holiday in England and Wales, and any reference in these Undertakings to 'days' means calendar days.

2. Commencement

- 2.1 The obligations in these Undertakings will come into force on the Commencement Date.

Obligations on Imerys

3. Supply of kaolin

- 3.1 Imerys undertakes to supply each Price Controlled Product from the Commencement Date up to and including the Termination Date in accordance with these Undertakings.
- 3.2 Subject to paragraph 3.5 below the Ex-Works Price of each Price Controlled Product shall not exceed:
- (a) for Price Controlled Products dispatched by Imerys on or prior to 31 December 2015, the relevant Ex-Works Price set out in the relevant column of Appendix 1 or Appendix 2 (the Initial Ex-Works Price);
 - (b) for Price Controlled Products dispatched by Imerys on or after 1 January 2016 but on or before 31 December 2016, the Initial Ex-Works Price plus the

percentage increase in the RPI Index over the 12-month period to July 2015 minus 0.5 per cent;

(c) for Price Controlled Products dispatched by Imerys on or after 1 January 2017 but on or before 31 December 2017, the Ex-Works Price applicable as at 31 December 2016 plus the percentage increase in the RPI Index over the 12-month period to July 2016 minus 0.5 per cent; and

(d) for Price Controlled Products dispatched by Imerys on or after 1 January 2018 but on or before 31 December 2018, the Ex-Works Price applicable as at 31 December 2017 plus the percentage increase in the RPI Index over the 12-month period to July 2017 minus 0.5 per cent.

3.3 The maximum Ex-Works Price of each Price Controlled Product as calculated in accordance with paragraph 3.2 above shall be known as the Price Cap.

3.4 Subject to paragraphs 3.5 and 4.1 to 4.11 below, Imerys shall not at any time apply any Surcharge to sales of a Price Controlled Product. Nothing in these Undertakings shall require Imerys to supply any Price Controlled Product in volumes exceeding:

(a) for Price Controlled Products dispatched by Imerys between the Commencement Date and 31 December 2013, the pro rata Maximum Annual Volume for that Price Controlled Product; and

(b) for Price Controlled Products dispatched by Imerys in each of 2014, 2015, 2016, 2017 and 2018, the Maximum Annual Volume for that Price Controlled Product,

and for the avoidance of doubt, these Undertakings shall not apply to the supply of any Price Controlled Product in excess of the above volumes.

3.5 Where a Customer requests changes to the type of pallet, type of bag or pallet configuration in which a Price Controlled Product is supplied, and Imerys agrees to such changes, Imerys shall be entitled to increase the Ex-Works Price by passing on without mark-up any increased third party costs it incurs as a result of the change. Imerys shall provide invoices evidencing such increased third party costs to the Customer on request, subject to redaction of any information relating to Imerys's arrangements with its other customers.

3.6 Unless otherwise agreed with the Customer, Imerys shall supply each Price Controlled Product on the Initial Terms and Conditions. In the event of any conflict between the Initial Terms and Conditions and these Undertakings, then these Undertakings shall prevail.

3.7 Before any Price Negotiations with a Customer take place, Imerys shall notify that Customer of the Price Cap that will apply in the following calendar year, calculated according to paragraph 3.2.

4. Calculation of delivery costs

4.1 Imerys shall arrange for delivery to Customers who wish to purchase a Price Controlled Product on a delivered basis, in accordance with the provisions of paragraphs 4.2 to 4.14 below.

4.2 Paragraphs 4.3 to 4.14 apply where a Customer informs Imerys prior to 1 November each year of its intention to purchase a Price Controlled Product on a delivered basis for the following calendar year and provides to Imerys such information as Imerys

may reasonably require to obtain a quote for the required freight services from a third party haulier covering the following calendar year, including the Customer Site, Incoterm, Payload, packaging type and pallet configuration.

- 4.3 Following receipt of the information specified in paragraph 4.2 above, Imerys shall include the required freight services in its UK-wide freight tender for the following calendar year, involving at least three third party hauliers, and inform the Customer in writing of Imerys's preferred quote as a price per tonne (the Delivery Cost) within 7 days of concluding its UK-wide freight tender.
- 4.4 Where the Customer informs Imerys in writing within 14 working days of receiving the preferred quote specified in paragraph 4.3 above that it accepts the Delivery Cost, Imerys shall (subject to paragraphs 4.5 to 4.7) supply the Price Controlled Product at the Delivered Price for the duration of the following calendar year.
- 4.5 Paragraphs 4.6 and 4.7 apply where, notwithstanding paragraphs 4.2 to 4.4, a Customer informs Imerys:
- (a) after 1 November in any year of its intention to purchase a Price Controlled Product on a delivered basis for the following calendar year;
 - (b) on or after 1 January in any year of its intention to purchase a Price Controlled Product on a delivered basis for the remainder of that calendar year; or
 - (c) on or after 1 January in any year of its intention to purchase a Price Controlled Product on a delivered basis for the remainder of that calendar year but on the basis of a change to the existing delivery arrangements, including a change to the Customer Site, Incoterm, Payload, packaging type or pallet configuration;
- and provides to Imerys such information as Imerys may reasonably require to obtain a quote for the required freight services from a third party haulier for the relevant period, including the Customer Site, Incoterm, Payload, packaging type or pallet configuration.
- 4.6 Within 14 days of receiving the information specified in paragraph 4.5 above, Imerys shall commence a tender process for the required freight services for the following relevant period involving at least three third party hauliers, and inform the Customer in writing of Imerys's preferred quote as a price per tonne (the Delivery Cost) within 7 days of concluding the tender process.
- 4.7 Where the Customer informs Imerys in writing within 14 days of receiving the preferred quote specified in paragraph 4.6 above that it accepts the Delivery Cost, Imerys shall commence supply of the Price Controlled Product at the Delivered Price as soon as practicable and subsequently for the remainder of the relevant calendar year.
- 4.8 Imerys shall not at any time apply any mark-up to the Delivery Cost. Subject to paragraph 4.10 below, any changes in third party freight costs shall be absorbed by Imerys (for freight cost increases) or retained by Imerys (for freight cost decreases).
- 4.9 Paragraph 4.10 applies where Imerys's contract with a third party haulier for the delivery of a Price Controlled Product includes a Fuel Variance Clause.
- 4.10 Where Imerys's third party freight costs associated with supplying a Price Controlled Product increase due to the application of a Fuel Variance Clause caused by fuel costs increasing by more than 5 per cent from the Base Fuel Price, Imerys shall be

entitled to increase the Delivery Cost by the incremental increase above 5 per cent of the fuel element of these costs. Where Imerys's third party freight costs associated with supplying a Price Controlled Product decrease due to the application of a Fuel Variance Clause caused by fuel costs decreasing by more than 5 per cent from the Base Fuel Price, Imerys shall decrease the Delivery Cost by an amount equal or greater than the incremental reduction beyond 5 per cent of the fuel element of these costs.

- 4.11 Nothing in paragraphs 4.1 to 4.10 shall require Imerys to maintain a Delivery Cost where there is a change to the Customer Site, Incoterm, Payload, packaging type or pallet configuration provided by the Customer under paragraph 4.2 or 4.5, which results in a change to the cost of third party freight services. In such circumstances, paragraphs 4.6 and 4.7 apply.
- 4.12 Nothing in paragraphs 4.1 to 4.10 shall prevent Imerys from invoicing a Customer for any increase in third party freight costs resulting from the Customer's own conduct, including but not limited to increased third party freight costs arising from:
- (a) third party haulier waiting time at a Customer Site beyond the period agreed for unloading; and
 - (b) use of an alternative haulier as a result of a Customer request for a change in its normal delivery arrangements, such as short notice deliveries or a change in the type of delivery vehicle.
- 4.13 Nothing in paragraphs 4.1 to 4.10 shall prevent a Customer from purchasing a Price Controlled Product from Imerys at any time on an Ex-Works basis at the Ex-Works Price, provided that the Customer and its third party hauliers comply with the requirements generally applied by Imerys to third party hauliers operating at its facilities, as set out in Appendix 10.
- 4.14 Within 14 days of receiving a request from a Customer, Imerys undertakes to provide that Customer with any quote obtained under paragraphs 4.3 and 4.6 and any subsequent third party invoices for freight services subject to the redaction of any information relating to Imerys's arrangements with its other customers.

5. Transition to supply of suitable alternative grades

Transition Notice

- 5.1 Where Imerys intends to supply an alternative grade to the Initial Grade forming part of a Price Controlled Product from a specified date (the Transition Date), it must provide at least 12 months' prior written notice to the relevant Customer in the form set out in Appendix 5 (a Transition Notice).
- 5.2 Imerys shall not specify a Transition Date prior to 1 January 2016. For the avoidance of doubt, this means that Imerys shall not, without the agreement of the Customer, cease supplying a Customer with a Price Controlled Product that contains an Initial Grade before 1 January 2016.

Reformulation Work

- 5.3 Where Imerys intends to supply an alternative grade to the Initial Grade, Imerys shall work with the Customer in good faith to identify a grade from its existing portfolio of grades or develop an alternative grade that meets the Customer's pre-existing

requirements or other requirements as agreed between Imerys and the Customer for which the Initial Grade is used (Reformulation Work). The nature of the Reformulation Work shall be determined by Imerys, acting reasonably and in consultation with the Customer, and will typically involve the following steps:

- (a) theoretical analysis of the Customer's requirements of the Initial Grade (and corresponding requirements of any alternative grade to the Initial Grade) on the basis of the physical and chemical properties of the Initial Grade and alternative grades and information provided by the Customer on the Performance-Mineral Application to be served;
- (b) production and laboratory testing of an alternative grade to the Initial Grade in a formulation provided by the Customer, where Imerys has the facilities and methodology to carry out such tests;
- (c) following agreement between Imerys and the Customer that laboratory testing has been successful, and where appropriate, conducting pilot plant trials to produce industrial quantities of a proposed alternative grade to the Initial Grade for industrial trials by the customer; and
- (d) if requested by the Customer, and where appropriate, providing technical assistance in trials of an alternative grade to the Initial Grade conducted by the Customer at its own sites.

- 5.4 Imerys shall not charge the Customer for any Reformulation Work carried out by Imerys's employees or in Imerys's facilities.
- 5.5 To comply with paragraph 5.3 above, Imerys may request from the Customer free of charge relevant information including, but not limited to, details of the Customer's existing formulation, critical parameters including historical/acceptable variations of these and preparation methods and test methods. All requests for such information by Imerys shall be reasonable and, if requested by a Customer, Imerys shall provide a reasonable non-disclosure agreement. Imerys may also request that the Customer supplies it free of charge with any materials used in that Customer's formulations which cannot be obtained by Imerys on the open market (Non-Standard Materials) in sufficient quantities that are reasonably required to enable Imerys to carry out laboratory testing.
- 5.6 Imerys shall not be required to carry out the Reformulation Work specified in paragraph 5.3 where a Customer unreasonably refuses to provide Imerys with, or unduly delays without valid reasons to provide Imerys with, free of charge, the information and/or Non-Standard Materials requested by Imerys under paragraph 5.5 above.
- 5.7 Imerys shall supply the Customer with up to five tonnes of alternative grade free of charge to enable it to test the identified or developed alternative grade and shall supply such additional volumes of alternative grade as the Customer may reasonably request for testing at a price not exceeding the Ex-Works Price or Delivered Price for the Initial Grade, as appropriate.

Suitability Notice

- 5.8 Where, following the conclusion of the Reformulation Work Imerys considers that it has identified or developed an alternative grade that meets the Customer's pre-existing or agreed requirements for the Performance-Mineral Application in which the Initial Grade is used (an Identified Alternative Grade), Imerys shall provide notice to

the Customer in the form set out in Appendix 7 (a Suitability Notice) that it considers the Identified Alternative Grade is a Suitable Alternative Grade.

5.9 The Suitability Notice shall:

- (a) specify that Imerys must continue to supply the Initial Grade until the later of (i) the Transition Date; and (ii) 30 calendar days following the date of the Suitability Notice; unless the Customer consents in writing to being supplied with the Identified Alternative Grade from an earlier date;
- (b) specify that the Customer may initiate a Dispute if it considers that the Identified Alternative Grade is not a suitable replacement for the Initial Grade, and that Imerys must continue to supply the Initial Grade until at least 90 calendar days have elapsed following an Independent Expert's determination pursuant to paragraph 38 of the Dispute Resolution Scheme that the Identified Alternative Grade is a Suitable Alternative Grade;
- (c) specify that the Undertakings will apply to the supply of the Identified Alternative Grade in the same way as they apply to the Initial Grade; and
- (d) contain a product specification sheet for the Identified Alternative Grade.

Supply of alternative grade

5.10 Imerys shall be entitled to supply the Identified Alternative Grade instead of the Initial Grade:

- (a) at any time after service of a Suitability Notice and where Imerys has received the written consent of the Customer to do so, and this may be before the Transition Date; or
- (b) at any time on or after the Transition Date where:
 - (i) the Customer has not initiated a Dispute in relation to the Suitability Notice provided that at least 30 calendar days have elapsed since the Suitability Notice was served on the Customer; or
 - (ii) at least 90 calendar days have elapsed following an Independent Expert's determination pursuant to paragraph 38 of the Dispute Resolution Scheme that the Identified Alternative Grade is a Suitable Alternative Grade.

5.11 The Suitable Alternative Grade shall be supplied by Imerys in accordance with these Undertakings and the Price Cap shall apply to the Price Controlled Product that contains the Suitable Alternative Grade in the same manner as it applies to the Price Controlled Product containing the Initial Grade in accordance with paragraph 3.2. Imerys shall provide the OFT with a copy of the product specification sheet relating to the Suitable Alternative Grade prior to supplying the Suitable Alternative Grade and this product specification sheet shall form part of Appendix 9 of these Undertakings.

5.12 For the avoidance of doubt, where Imerys supplies a Suitable Alternative Grade in accordance with paragraph 5.10 these Undertakings shall not subsequently require Imerys to supply the Initial Grade as part of that Price Controlled Product.

6. Dispute Resolution Scheme

- 6.1 Imerys undertakes to comply with and fulfil any obligations placed upon it under the Dispute Resolution Scheme as set out in Appendix 6.
- 6.2 Imerys shall at all times maintain an offer for any disputes with a Customer as to whether an Identified Alternative Grade is a Suitable Alternative Grade (Dispute) to be referred to an Independent Expert for determination in accordance with the Dispute Resolution Scheme.
- 6.3 Imerys shall participate in the Dispute Resolution Scheme where any Customer accepts the offer set out in paragraph 6.2 above and initiates a Dispute by serving a Dispute Notice and each of Imerys and the Customer agree in writing to be bound by the Dispute Resolution Scheme.
- 6.4 If at any stage during the lifetime of these Undertakings the OFT considers that a change to the Dispute Resolution Scheme is necessary to ensure the effective operation of these Undertakings and/or for the effective discharge of the Independent Experts' functions the OFT having regard to any representations made to it by an Independent Expert or by Imerys or by any Customer:
- (a) shall advise Imerys in writing of the proposed change to the Dispute Resolution Scheme;
 - (b) shall allow Imerys 14 days to raise objections to the change proposed; and
 - (c) shall take account of any objections raised by Imerys before directing any change to the Dispute Resolution Scheme,
- and Imerys undertakes that it shall then make such changes to the Dispute Resolution Scheme as the OFT shall direct.
- 6.5 These Undertakings, including the Dispute Resolution Scheme, shall operate without prejudice to the statutory rights of any person under the Act, the Competition Act 1998 and the Enterprise and Regulatory Reform Act 2013, each as amended from time to time.

7. Notification of these Undertakings to customers

- 7.1 Within 21 days of the Commencement Date, Imerys shall notify each Customer of these Undertakings in the form set out in Appendix 8 (an Initial Notice). The Initial Notice shall be sent by registered post to the registered address of that Customer.

8. Variations to these Undertakings

- 8.1 The terms of these Undertakings may be varied with the prior written consent of the CC.
- 8.2 The consent of the CC to any variation of these Undertakings shall not be unreasonably withheld.
- 8.3 Imerys shall not without the prior written consent of the OFT transfer any activities that are or may be material in relation to these Undertakings to a person that is not a member of the Imerys Group unless such person has confirmed to the OFT in writing

his willingness to comply with these Undertakings insofar as they apply to the transferred activities.

- 8.4 Imerys shall not without the prior written consent of the OFT transfer control of a company that is a member of the Imerys Group carrying on activities that are or may be material in relation to these Undertakings to a person that is not a member of the Imerys Group unless such person has confirmed to the OFT in writing his willingness to comply with these Undertakings insofar as they apply to the transferred company.
- 8.5 Where a request for consent is sought pursuant to paragraphs 8.3 or 8.4, the OFT will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.
- 8.6 The consent of the OFT shall not be unreasonably withheld.

9. Compliance

- 9.1 Imerys S.A. shall procure that each subsidiary of Imerys shall comply with these Undertakings in so far as relevant as if such subsidiaries had given them.
- 9.2 Imerys shall deliver an annual report to the OFT by 28 February during each year in which these Undertakings remain in force, with the first annual report to be delivered by 28 February 2014. Each such report shall have been approved by the Imerys Minerals board of directors and shall include a detailed and accurate account of:
- (a) the prices charged and volumes supplied by Imerys to the Customer of each Price Controlled Product in the preceding calendar year, in the form set out in Appendix 11;
 - (b) steps taken during the preceding calendar year to ensure compliance with the Undertakings;
 - (c) instances in the preceding calendar year where a breach or potential breach of the Undertakings has been identified and the steps taken to rectify it; and
 - (d) how the report was compiled.
- 9.3 Imerys shall promptly provide to the OFT such information as it may reasonably require for the purpose of monitoring or enforcing compliance with the Undertakings.
- 9.4 Imerys shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these Undertakings to do or refrain from doing.
- 9.5 In the event of a conflict between directions, instructions or decisions issued by the OFT pursuant to paragraph 9.4 and the Independent Expert pursuant to the Dispute Resolution Scheme, then Imerys's obligations under paragraph 9.4 shall prevail.
- 9.6 Imerys shall appoint a Compliance Director who will have primary responsibility for:

- (a) monitoring compliance with these Undertakings and preparing reports pursuant to paragraph 9.2;
 - (b) facilitating and responding to any requests for information from the OFT and any Independent Expert pursuant to paragraph 9.3;
 - (c) monitoring the implementation of measures to respond to any non-compliance with these Undertakings and any decisions, directions and guidance issued pursuant to these Undertakings;
 - (d) maintaining staff awareness within Imerys Minerals of the requirements of these Undertakings, including developing and overseeing an ongoing internal education program directed towards ensuring compliance with these Undertakings.
- 9.7 Imerys undertakes that should it at any time become aware of any breach of any provision of these Undertakings it shall inform the OFT of the breach and the circumstances in which it arose in writing within seven (7) Working Days following the date on which it became aware of the breach.
- 9.8 Imerys undertakes that should it at any time become aware that it has received any payment from a Customer in respect of a Price Controlled Product in excess of the amount it is entitled to charge under these Undertakings it shall refund the excess to the Customer within seven (7) Working Days and provide the Customer with a written explanation of the reason for the refund.
- 9.9 Any communication from Imerys to the OFT under these Undertakings shall be addressed to:
- (a) until 31 March 2014: Director of Mergers, OFT, Fleetbank House, 2–6 Salisbury Square, London EC4Y 8JY or such other address as the OFT may direct in writing; and
 - (b) from 1 April 2014: Director of Mergers, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other address as the CMA may direct in writing.
- 9.10 Without prejudice to any additional form of communication and/or address agreed between them, any communication from Imerys to a Customer under these Undertakings shall be deemed to have been validly served on that Customer if it is served on that Customer at its registered office.

10. Acceptance of service

- 10.1 Imerys hereby authorizes Imerys Minerals to accept on behalf of Imerys service at Imerys Minerals' registered office of all documents, orders, requests, notifications or other communications connected with the Undertakings (including any such document which falls to be served on or sent to Imerys in connection with any proceedings in courts in the United Kingdom).
- 10.2 Any document, order, request, notification or other communication connected with the Undertakings shall be deemed to have been validly served on Imerys if it is served on Imerys Minerals at its registered office (Reference: CC Final Undertakings, attention: [X]), and service or receipt shall be deemed to be acknowledged by such Imerys company if it is acknowledged by Imerys Minerals.

10.3 Paragraph 10.2 has effect irrespective of whether, as between Imerys Minerals and Imerys, Imerys Minerals has or continues to have any authority to accept and acknowledge service on behalf of Imerys, and no failure or mistake by Imerys Minerals (including a failure to notify Imerys of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of the Undertakings, including any proceeding or judgment pursuant to the Undertakings.

11. Governing law

11.1 These Undertakings shall be governed by and construed in all respects in accordance with English Law.

11.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

12. Termination

12.1 These Undertakings shall be in force until 31 December 2018 or until such time as they are varied, released or superseded under the Act (the Termination Date).

12.2 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF IMERYS S.A.

(signed) [✂]
CEO

FOR AND ON BEHALF OF IMERYS UK LIMITED

(signed) [✂]
Director

FOR AND ON BEHALF OF IMERYS MINERALS LIMITED

(signed) [✂]
Director

Imerys terms and conditions

IMERYS MINERALS LTD - GENERAL CONDITIONS OF SALE

Any orders made by the Buyer and accepted by IMERYS Minerals Ltd (the Seller) implies unreserved acceptance of these General Conditions of Sale, which shall govern the Contract to the exclusion of all others, notwithstanding any contrary provision in the Buyer's General Conditions of Purchase, except otherwise specifically agreed in writing.

1^o/ Orders

No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's representatives.

2^o/ Quality

a. The Seller will use all reasonable efforts to ensure that the Products conform to the Seller's published specifications current at the time of dispatch of the Products or the specifications specifically agreed in writing with the Buyer (including changes notified to the Buyer under the provisions of this clause). Since, however, the Products are based on naturally occurring minerals, the Seller reserves the right to change such specifications from time to time and, in that event, will notify the Buyer prior to dispatch of any such changes. Except where specifically otherwise agreed, the orders are executed according to the custom and practice generally accepted within the industry.

b. The Seller's Products are offered on the basis that the Buyer has taken all reasonable measures to confirm their suitability for the Buyer's own particular products, applications and production methods. Recommendations for use of the Products, whether given in writing, orally, or to be implied from results of tests carried out by the Seller, are based on current knowledge at the time. No guarantee, either express or implied, is made by the Seller regarding the validity of the recommendations or the results obtained therefrom.

3^o/ Defective Products

The Products shall at the point of delivery correspond with their respective specifications.

If any of the Products shall be found to be defective, such defects shall be notified by the Buyer in writing to the Seller:

a. for defects apparent on reasonable inspection, within 14 days of delivery.

b. for latent defects or defects not apparent upon reasonable inspection, within 14 days of when those defects could reasonably have been first identified.

If the Products are recognised to be defective by the Seller, the Seller shall, at its option, either replace the defective part of the Products free of charge or credit the Buyer with a corresponding proportion of the original invoice price.

4^o/ Liability

In respect of any defects, whether or not apparent upon inspection or latent, the Seller's liability shall be strictly limited to the replacement or credit referred to in Clause 3 above.

Without prejudice to the above, the Seller shall be under no liability in respect of alleged defective Products unless:

a. The Buyer gives to the Seller written notice and details of the defect within the periods mentioned in Clause 3.

b. The Buyer gives the Seller's representative adequate opportunity to inspect the Products and remove samples for analysis.

c. The Buyer has stored and used the Products properly and has forthwith ceased processing.

In any event the Seller shall not be liable in respect of any loss or damage which arises:

a. In respect of the Buyer's liability to any third party, including but not limited to the Buyer's employees or customers.

b. In respect of other direct or indirect consequential loss or damage (including any loss or damage in respect of any loss of profits or income or business whether suffered by the Buyer or by any third party).

All other conditions warranties or other terms (except the Seller's implied undertaking as to title and except in respect of death or personal injury caused by the Seller's negligence), whether express or implied, statutory or otherwise, are hereby excluded.

The use of the Products, including designing, testing and specifying a compound or product incorporating any of the Products, is the sole responsibility of the Buyer who shall assume any consequences thereof, whether direct or indirect, and whatsoever its nature, and the Seller makes no warranties in respect thereof. The Buyer shall assess Products across the specification range and take reasonable precautions to prevent any contamination of Products caused through no fault of the Seller during carriage or otherwise from entering the Buyer's production process. The Buyer acknowledges that it is relying on its own expertise and knowledge and not that of the Seller in entering the Contract. The Buyer shall make sure that Products comply with all laws and regulations applying to the Buyer from time to time.

The Seller's prices to the Buyer are determined on the basis of the exclusions and limitations of liability contained in these Conditions. The Buyer expressly agrees that these exclusions and limitations are reasonable because of the likelihood (amongst other matters) that otherwise the amount of damages awarded to the Buyer for a breach by the Seller of this Sale may be disproportionately greater than the price of the Products.

5^o/ Delivery

The time for delivery shall not be of the essence of the Contract. The Seller shall not be liable for any loss or damage howsoever arising from delay in delivery.

Delivery of the Products shall take place:

a. Where the Seller undertakes delivery of the Products, when they are unloaded off the Seller's or third party's vehicle, ship or other transport at the premises, port, station or other address specified by the Buyer or, in the case of rail wagons or tankers parked at the Buyer's premises, upon arrival at the Buyer's premises.

b. Where the Buyer undertakes to collect the Products, when they are loaded on the Buyer's or a third party's vehicle, ship or other transport at the premises of the Seller or the address of any storage or warehouse facility used by the seller for the storage of Products. The Seller shall be under no obligation to effect the delivery of the Products if the Buyer is in any breach of any of its obligations towards the Seller whether arising out of these Conditions or otherwise.

Risk shall transfer to the Buyer upon delivery. It is the sole responsibility of the Buyer to take out all insurance cover required against all risks that could be incurred or caused by the Products as from their delivery.

Carriers are responsible for Products lost or damaged in transit. In the case of such loss or damage, the Buyer shall immediately notify the Carrier or its agent thereof and shall do all things necessary to effect a claim against the Carrier for such loss or damage.

Where any Products are sold ex works or FOB UK Port, the Seller accepts no liability for any damage or deterioration in the Products as a result of the condition or cleanliness of any transporting vehicle not belonging to the Seller.

6^o/ Weight and Quantities

Weight and quantities, as described in transport documentation, shall exclusively be taken into consideration in order to establish the respective invoices. Weight and quantities may differ from those stipulated on the order as far as usually accepted in the industry.

7^o/ Invoice and Price

a. An invoice shall be either enclosed with every delivery or separately sent, and shall include all required references, in particular any discount conditions in case of early payment.

b. The price of the Products will be those ruling at the date of dispatch.

8^o/ Payment and Penalty

Unless otherwise agreed in writing, payment shall be made within 30 days following the date of invoice.

Time for payment is of the essence of the Contract. If the Seller does not receive full payment on the due date in respect of any Contract (except for a bona fide dispute), all outstanding payments to be made by the Buyer shall immediately and without further notice become due and payable, whether or not secured, and without any discount, if any, for early payment.

Without prejudice to the above, any outstanding sum on the due date shall automatically and without prior notice, give rise to payment of overdue interest for late payment on the full amount outstanding daily from the due date until the date of payment at the rate of 3% per annum above (UK) Barclays Bank plc base rate from time to time.

9^o/ Intellectual Property Rights

All patents, trademarks, tradenames, copyrights and designs in relation to the Products and any literature or confidential information supplied by the Seller in connection therewith shall be and remain the absolute property of the Seller. The Buyer shall not either before, during or after the Contract have any claim or right or property therein or register or cause to be registered in any part of the world any patent, trademark, tradename, copyright or design similar to, or any imitation of, such patent, trademark, tradename, copyright or design.

The Products are supplied on the basis that the Buyer will not chemically or otherwise analyse any samples of the Products and will not use any information related to the Products for the production of Products similar or equivalent to the Products or the supply thereof from a competitive source. This limitation shall not prevent analysis in the case of a bona fide product liability dispute, where legal action is threatened or pending against the Seller.

The Buyer is also responsible for ensuring that the intended use of the Products will not infringe any third party's intellectual property rights.

10^o/ Packaging

Unless otherwise agreed, the Buyer shall meet all obligations relating to the recycling of packaging or shall properly and safely dispose of all packaging.

Returnable packaging materials (e.g. big bags or pallets), if specified, shall be returned to the Seller at the original point of shipment within 12 months from the date of shipment.

11^o/ Retention of Title

The Seller shall retain the ownership of the Products until full payment of the price, including principal and any interest due. Submission of a draft or of any other document or trade bill creating an obligation to pay shall not constitute a payment hereunder.

Until full payment, the Buyer shall ensure that the Products are readily identifiable.

The Buyer shall oppose any legal action which may be initiated by third parties on the Products by means of seizure, confiscation or any other equivalent procedure and shall as soon as it becomes aware of such possibility, notify the Seller to enable it to preserve its rights. The Buyer shall not enter into any arrangement or agreement the effect of which is the creation of security or any other kind of encumbrance over the Products in favour of any third parties.

If the Buyer goes into liquidation or becomes insolvent, or has a receiver or administrator appointed, or fails to pay for any Products on the due date, the Seller hereby reserves the right to cancel future deliveries and, at the Buyer's expense, to recover the Products. The Buyer shall return the Products on demand or otherwise the Seller shall be entitled to recover the Products or any part thereof. For the purposes of exercising such rights the Seller, its servants and agents with appropriate transport may enter on the Buyer's premises and any other address where the Products are located at any time in order to recover the Products. Products recovered shall be credited against all sums owing by the Buyer to the Seller, including costs of recovery, as the Seller may determine.

12^o/ Force Majeure

Neither party shall be held liable for any delay in performing, or any failure to perform their respective obligations, if the delay or failure is due to force majeure. Force majeure is an event that is unforeseeable, unpreventable, and beyond the control of the party so affected and renders the performance of the obligations impossible and which cannot be stopped or prevented by ordinary legal means. Force majeure includes, without limitation: civil or foreign war, riot, strike, governmental or local authority action, power failure or breakdown of machinery, fire, natural disasters, or exceptional weather conditions.

Should the event of force majeure exceed a period of 3 consecutive months, either party may terminate the Contract without penalty by written notice.

13^o/ Dispute and Governing Law

The Contract shall be governed and construed in accordance with the laws of England.

Any dispute arising out of or in connection with the Contract shall be submitted to the jurisdiction of the English Courts.

If any provisions of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of these Conditions and the remainder of the provision in question shall not be affected.

Goonvean terms and conditions

CONDITIONS OF SALE

1. Definitions

In these Conditions of Sale "the Seller" means Goonvean Limited, "Invoice" means the Seller's Invoice, "the Buyer" means any person, firm or company to whom the Seller may from time to time sell the Goods and "the Goods" means any materials supplied by the Seller including all instructions, leaflets, manuals, drawings, illustrations and specifications provided by the Seller to the Buyer. The agreements, warranties, conditions, representations and other terms set out in the Invoice and in these Conditions are together referred to in these Conditions as "the Agreement for Sale".

2. The Agreement

These Conditions shall be deemed to be incorporated in all contracts entered into between the Seller and the Buyer which provide for the sale of any Goods by the Seller to the Buyer. These Conditions shall apply in place of and prevail over any terms or conditions contained or referred to in the Buyer's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically agreed to in writing by the Seller and any purported provisions to the contrary are hereby excluded or extinguished. The Agreement for Sale represents the complete contract between the Seller and Buyer with regard to the Goods and contains all agreements, warranties, conditions, representations and other terms agreed, made or relied upon by either party in connection with the Goods. No amendment or addition to the Agreement for Sale shall be binding on the Seller unless agreed in writing (by an authorised representative of the Seller).

3. Offers and Supply Of Information

(a) Any price lists, quotations or other sales information which the Seller provides to the Buyer do not constitute offers made by the Seller to the Buyer and the Seller reserves the right to withdraw or revise the same at any time prior to receipt by the Buyer of the Invoice.

(b) No offer, obligation or agreement relating to the sale of the Goods is binding on the Seller unless set out in the Agreement for Sale or in an amendment or addition thereto duly agreed in writing by the Seller.

4. Customs Duties and Taxes

All Customs and Excise duties import or export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods or payments for them or upon freight or other charges shall be borne by the Buyer and except as stated in the Invoice are additional to the prices therein stated.

5. Sale by Sample

(a) Where the Seller has provided the Buyer with a sample of its materials for the purpose of establishing the suitability of such sample to the Buyer's manufacturing process, the materials will substantially conform with such sample.

(b) All goods are offered by the Seller on the basis that the Buyer has taken all reasonable measures to confirm their suitability for the Buyer's own particular products and production methods.

(c) The Seller will use all reasonable efforts to ensure that the goods conform to their respective samples and specifications. Since, however the goods are based on naturally occurring raw materials the Seller reserves the right to marginally change the goods from time to time, and where possible, will notify the Buyer of any such changes.

6. Delivery

(a) Unless otherwise expressly provided in the Sales Agreement all sales are Ex Works (Incoterms 2000) and delivery of the Goods to the carrier shall constitute delivery thereof to the Buyer and from the point in time immediately preceding loading the Goods shall be at the Buyer's risk.

(b) Where goods are sold Ex Works or FOB at a UK Port the Seller accepts no responsibility or liability for the condition or cleanliness of any transporting vehicle, container or hold or other material part of any ship or ships concerned.

(c) Any period or date for delivery stated in the Agreement for Sale is intended as an estimate only and is not a contractual commitment and the Seller shall not be liable for any damages or losses arising out of the delay.

(d) At the request of the Buyer, the Seller shall as agent for the Buyer arrange for carriage and transport insurance to the destination specified in the Buyer's order on such terms as to carriage and insurance as the Seller considers appropriate, unless the Buyer specifies otherwise, and the Seller shall invoice the Buyer all carriage and insurance costs incurred. Section 32 (2) of the Sale of Goods Act 1979 shall not apply to the Agreement for Sale.

7. Instalment Deliveries

The Seller may deliver the Goods in one or more instalments. Where delivery is effected by instalment each instalment shall be treated as a separate contract. Failure by the Seller to make any delivery or part delivery in accordance with the Agreement for Sale or any claim by the Buyer in respect of such delivery or part delivery shall not entitle the Buyer to reject the balance of the Goods agreed to be purchased by the Buyer.

8. Passing of Property

The Goods shall remain the property of the Seller as legal and equitable owner and no property in or title to the Goods shall pass to the Buyer until their full price has been duly paid to the Seller together with the full price of any Goods the subject of any other contract with the Seller. Until payment in full the Buyer shall store the Goods in such a way as to enable them to be identified as the property of the Seller and shall not sell or encumber the Goods in any way. Failure to pay the price for the Goods and that of such other goods referred to above when due shall, without prejudice to any other remedies the Seller may have, entitle the Seller to repossess the Goods or so much thereof as the Seller may determine from any premises where they may be. Interest and compensation for debt recovery costs will, where appropriate, be charged for late payment of invoices using the entitlements provided by The Late Payment Legislation. For the purpose of

repossessing the Goods or any part thereof the Buyer hereby grants an irrevocable licence to the Seller, its employees or agents to enter upon such premises and the Buyer shall pay to the Seller the cost of removal and transport of the Goods or any part thereof.

9. Limitation of Damages

(a) The Seller shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer, however caused, including but not limited to loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

(b) Subject to Condition 13 the Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the Goods which give rise to such liability in respect of any occurrence or series of occurrences.

10. Liability for Shortages

Where delivery is other than at the Seller's premises and it is expressly agreed that risk remains with the Seller until delivery to Buyer, the Seller shall not be liable for shortages in quantity delivered unless the Buyer notifies the Seller of any claim for short delivery within 14 days of receipt of the goods.

11. Returning the Goods

The Buyer shall not return any of the Goods to the Seller without the Seller's written consent and the Seller shall not be under any liability whatsoever for the Goods returned by the Buyer without such consent.

12. Force Majeure

(a) The Seller shall have no liability in respect of any failure or delay in fulfilling any of the Seller's obligations to the extent that fulfilment thereof is prevented, frustrated, impeded and/or delayed or rendered uneconomic as a consequence of any circumstances or event beyond the Seller's reasonable control including without prejudice to the generality of the foregoing:

(i) compliance with any order, regulation, request or control of any national or local authority, government department or other competent authority of any country whether or not legally enforceable; or

(ii) any delays in or cancellations of deliveries or provision of services by third parties or shortages of the Goods, materials or parts or raw materials therefore; or

(iii) any strikes, lock outs or trade disputes whether involving the Seller's employees or others, fire, explosion, accident, break-down of plant or machinery, calamity or civil disturbance action of the elements, national calamity, war, riot or Act of God; or

(iv) failure in whole or in part of any power or energy supply.

(b) The Seller undertakes however to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith but in the event of shortages of the Goods or of available resources for their production, storage or delivery arising from any of the events or circumstances referred to in paragraph (a) of this Condition, the Seller reserves the right to allocate as it may think fit the Goods available and resources between customers with whom it has contractual obligations in respect thereof and shall not be obliged to purchase the Goods from third parties to make good such shortages.

13. Statutory Liability

Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of the Seller for death or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors or restricting any of the Seller's legal obligations arising under Section 12 of the Sale of Goods Act 1979 or under the Consumer Protection Act 1987.

14. Bankruptcy

If any meeting of creditors of the Buyer is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into or a supervisor, receiver, administrator or administrative receiver takes possession of or is appointed over its assets or it ceases to carry on business or to be able to pay its debts within the meaning of the Insolvency Act 1986 or a petition is presented or a meeting convened for the purpose of making an administration order or the winding-up, bankruptcy or dissolution of the Buyer then the Seller may, at its option, cancel the Agreement for Sale and recover any Goods despatched to the Buyer in which event any costs or expenses incurred by the Seller in effecting recovery shall be a debt due from the Buyer to the Seller.

15. Health and Safety

The Buyer agrees to pay due regard to any information supplied by the Seller and relating to the use for which the Goods are designed or have been tested and about any conditions necessary to ensure that they will be safe and without risks to health at all times when they are being used by any person at work, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the Goods will be safe and without risks to health at all times as are mentioned above.

16. English Law

The formation, construction and performance of the Agreement for Sale shall be governed in all respects by English Law.

17. Jurisdiction

The parties agree that the Courts of England shall have exclusive jurisdiction to settle any dispute which arises in connection with the Agreement for Sale save

that, having regard to the fact that this Condition conferring jurisdiction is for the benefit of the Seller only, the Seller shall retain the right to bring proceedings against the Buyer in any other court which has jurisdiction.

Form of Transition Notice

[Customer name and address]

Date

Dear [●]

Imerys currently supplies you with [Initial Grade] pursuant to the final undertakings given by Imerys to the Competition Commission and accepted on ● 2013 (the Undertakings), the text of which is appended to this letter and available at [include link to the OFT/CMA website].¹ This is a Transition Notice pursuant to paragraph 5 of the Undertakings.

[Include reasons for Imerys wishing to transition the customer]. Imerys considers that it will be able to work with you to identify an alternative grade (an Identified Alternative Grade) to [Initial Grade] that is suitable for use in your production processes.

The Undertakings allow Imerys to supply you with a Suitable Alternative Grade to [Initial Grade] where certain conditions are met (see in particular, paragraph 5 of the Undertakings). The Undertakings will apply to the supply of a Suitable Alternative Grade in the same way as they apply to the supply of [Initial Grade]. That means, that the Price Cap will continue to apply to the Suitable Alternative Grade as it currently applies to the Initial Grade until the termination of the Undertakings on 31 December 2018.

Imerys looks forward to working with you to identify and test an alternative to [Initial Grade] and we will be in contact with you shortly to discuss how best to accomplish this. Paragraph 5 of the Undertakings sets out typical Reformulation Work that Imerys will assist with, subject to obtaining appropriate information from you, and in accordance with the Undertakings Imerys will not charge you for any Reformulation Work carried out by Imerys's employees or in Imerys's facilities. Imerys will also supply you with up to five tonnes of an alternative grade free of charge to enable you to test the Identified Alternative Grade.

Once Imerys considers that the Identified Alternative Grade is a Suitable Alternative Grade it will provide you with a Suitability Notice. The Undertakings specify when Imerys can supply the Suitable Alternative Grade and Imerys intends to supply you with a Suitable Alternative Grade from [●] (the 'Transition Date' as defined in the Undertakings). However, Imerys is hopeful that testing of an alternative grade will be successful and that you will agree to transition from [Initial Grade] in advance of the Transition Date. To be clear, you are under no obligation to consent to transition before the Transition Date.

If, upon receipt of the Suitability Notice, you do not consider that the Identified Alternative Grade is a suitable replacement for [Initial Grade] for use in your production processes, you are entitled to initiate a Dispute as per the terms of the Undertakings. Imerys will seek to work with you to resolve your concerns but as per paragraph 6 of the Undertakings you are entitled to ask an Independent Expert to determine whether the Identified Alternative Grade is a Suitable Alternative Grade, with Imerys paying the costs of the Independent Expert. You will have 30 calendar days from receipt of the Suitability Notice to ask for an Independent Expert. If the Independent Expert subsequently determines that the Identified Alternative Grade is a Suitable Alternative Grade, you will have 90 calendar days' notice that the Undertakings will apply to the Suitable Alternative Grade instead of the Initial Grade. More

¹ All terms used in this letter have the meaning set out in the Undertakings.

information on the Dispute Resolution Scheme will be provided to you with the Suitability Notice.

Yours sincerely

[Imerys]

Dispute Resolution Scheme

Definitions

1. Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this document shall have the same meaning as in the main body of the Undertakings given by Imerys to the CC.

Application

2. This Dispute Resolution Scheme shall apply in the circumstances set out in paragraphs 6.1 to 6.5 of the Undertakings.

Initiation of a Dispute and contents of a Dispute Notice

3. Any Customer who:
 - (a) accepts the offer set out in paragraph 6.2 of the Undertakings; and
 - (b) agrees to be bound by this Dispute Resolution Scheme,may, within 30 calendar days of receipt of a Suitability Notice, request that an Independent Expert determine whether, in his reasonable professional opinion, an Identified Alternative Grade is a Suitable Alternative Grade by serving written notice on Imerys (the Dispute Notice).
4. Imerys shall engage with and be bound by this Dispute Resolution Scheme where Notice has been served on it by a Customer in accordance with paragraph 3 above. Imerys shall confirm receipt of a Dispute Notice by writing to the Customer stating that Imerys agrees to be bound by the Dispute Resolution Scheme.
5. Where a Customer has initiated a Dispute pursuant to paragraph 3 above, it cannot refer that same Dispute to any form of expert determination or third party adjudication under any dispute resolution procedure, save that this Dispute Resolution Scheme shall operate without prejudice to the statutory rights of any person under the Act, the Competition Act 1998 and the Enterprise and Regulatory Reform Act 2013 each as amended from time to time.
6. Subject to any agreement between Imerys and the Customer (the parties to the Dispute) to the contrary, any party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as it considers appropriate.
7. The Dispute Notice shall be in the form appended at Annex A to this appendix, and shall include the specific issues and concerns arising in connection with the specification or use of the Identified Alternative Grade in the application in which the Initial Grade is used by the Customer, including by reference to the performance parameters of the Initial Grade in its existing commercial applications.
8. Imerys shall send a copy of the Dispute Notice to the OFT within seven days of its receipt from the Customer.

9. Imerys and the Customer shall prepare instructions for potential Independent Experts (the Instructions) within 14 working days of service of the Dispute Notice and each of the Customer and Imerys shall use reasonable endeavours to agree the Instructions (including, where appropriate, setting out any aspects of the Instructions, such as their technical or factual basis, on which they disagree). Imerys shall send the agreed Instructions to potential Independent Experts from the list of approved experts at Schedule 1 or as agreed between the parties no later than five working days from reaching agreement. Imerys and/or the Customer may require that a potential Independent Expert enters into a reasonable non-disclosure agreement in respect of confidential information contained in the Instructions prior to being sent the Instructions.
10. Imerys shall send a copy of the Instructions to the OFT.
11. The Instructions shall include:
 - (a) the Suitability Notice and any accompanying documents;
 - (b) the product specification sheet relevant to the Initial Grade and the Identified Alternative Grade;
 - (c) the specific issues and concerns arising in connection with the specification or use of the Identified Alternative Grade in the application in which the Initial Grade is used by the Customer;
 - (d) the Customer's documentation and records of the performance history (both in trials and production) of the Initial Grade and the Identified Alternative Grade; and
 - (e) any other information Imerys or the Customer considers will assist the Independent Expert's determination of the Dispute.
12. Any person wishing to act as an Independent Expert shall confirm in writing to both the Customer and Imerys within five (5) working days of receiving the Instructions that he is able to act, and if so he shall provide Imerys and the Customer with a quotation of the estimated costs likely to be incurred in determining the Dispute (the Quotation). The Quotation will set out the individuals who will be involved in determining the Dispute, together with their hourly rates and an estimate of the number of hours they will work on the Dispute, and the Independent Expert's best estimates of his likely overall costs in determining the Dispute.

Appointment of Independent Expert

13. Following receipt by Imerys of a Dispute Notice and having obtained a Quotation or Quotations from potential Independent Experts pursuant to paragraph 12 above, Imerys and the Customer shall use their reasonable endeavours to seek to agree to appoint one or more organizations and/or individuals as an Independent Expert, having regard to the list of approved experts at Schedule 1 as amended from time to time, and the Quotations received pursuant to paragraph 12. Imerys and the Customer shall agree the terms of appointment of the Independent Expert.
14. Imerys shall notify the OFT in writing of the appointment of the Independent Expert and provide the OFT with the agreed terms of appointment.
15. Where either Imerys or the Customer gives written notice to the OFT that they have been unable to agree on the appointment of an Independent Expert or his terms of appointment, the OFT shall appoint one or more organizations and/or individuals as

Independent Expert as soon as practicable, after consulting with each of Imerys and the Customer in such manner as the OFT considers reasonable, and having regard to the list of approved experts at Schedule 1 as amended from time to time, and any Quotations received pursuant to paragraph 12.

16. The Independent Expert shall be appointed for the duration of the Dispute provided that his appointment shall terminate when all the relevant provisions of the Undertakings cease to be in force. Without prejudice to paragraphs 27 to 29 of this Dispute Resolution Scheme, the OFT shall (after consulting with Imerys and the Customer in such manner as the OFT considers reasonable) appoint a substitute Independent Expert to take account of the situation arising from the death, retirement, incapacity or resignation (in relation to one or more particular Disputes (as defined below)) of the Independent Expert after appointment.
17. Nothing in this Dispute Resolution Scheme shall prevent Imerys and the Customer from agreeing to appoint pursuant to paragraph 13, or the OFT from appointing pursuant to paragraph 15:
 - (a) an Independent Expert who has acted as an adviser during the Reformulation Work, prior to any possible Dispute arising; and/or
 - (b) an Independent Expert not listed in Schedule 1.
18. Nothing in this Dispute Resolution Scheme shall prevent Imerys from withdrawing a Suitability Notice at any time, in which case:
 - (a) the Suitability Notice shall cease to have effect;
 - (b) the Independent Expert shall resign without determining the Dispute; and
 - (c) Imerys shall continue to supply the Initial Grade to the Customer in accordance with the Undertakings, and may, if it considers it to be appropriate, continue Reformulation Work pursuant to paragraph 5.3 of the Undertakings.

Independence and conflicts of interest

19. The Independent Expert shall be independent from each of Imerys and the Customer and their affiliates, and possess the qualifications and resources necessary for the performance of its functions under this Dispute Resolution Scheme. He shall on appointment and thereafter be free from any conflict of interest and shall be under an obligation to declare to Imerys, the Customer and the OFT immediately any interest, financial or otherwise, in any matter relating to any Dispute he is asked to determine.
20. Following the termination of his appointment, the Independent Expert shall:
 - (a) not without the OFT's consent be employed by Imerys or the Customer for a period which will expire on the date which is six (6) months after the date of termination of the Independent Expert's appointment; and
 - (b) not disclose to any person any confidential information or confidential document provided to him in connection with his appointment as Independent Expert save as expressly permitted by the Undertakings and this Dispute Resolution Scheme at paragraphs 47 to 56.
21. The Independent Expert may adjudicate at the same time on one or more Disputes between Imerys and the same Customer.

Functions of the Independent Expert

22. The Independent Expert shall have the function of determining whether an Identified Alternative Grade is a Suitable Alternative Grade (a Dispute). The Independent Expert shall reach his decision and deliver it in accordance with the Undertakings and this Dispute Resolution Scheme.
23. In addition the Independent Expert shall be under a duty to carry out such other functions as are provided for in the Undertakings.
24. The Independent Expert shall act as an expert, and neither as arbitrator, mediator, conciliator nor any similar role and shall determine any Dispute in accordance with the Undertakings and this Dispute Resolution Scheme.
25. The Independent Expert shall act fairly and impartially in carrying out his duties and shall do so in accordance with this Dispute Resolution Scheme, the Undertakings and any agreed terms of appointment.
26. In carrying out any of his functions the Independent Expert:
 - (a) shall have regard to the Report; and
 - (b) may take into account such other information as he considers relevant.

Resignation or removal from office

27. The Independent Expert shall inform Imerys, the Customer and the OFT as soon as:
 - (a) he becomes aware of a conflict of interest;
 - (b) he becomes aware that he is not competent to decide the Dispute(s); or
 - (c) he is unable to deliver his decision in accordance with paragraphs 38 to 40 below,and, if required by either Imerys, the Customer or the OFT, shall resign from determining any particular Dispute or Disputes.
28. A person may resign as the Independent Expert in relation to a Dispute at any time by giving one month's notice in writing to Imerys, the Customer and the OFT. The OFT may direct the immediate removal of an Independent Expert on the grounds of gross misconduct, incapacity or serious or repeated breach of the terms of this Dispute Resolution Scheme or the Independent Expert's terms of appointment or where the OFT considers there has been unreasonable delay in the discharge of the functions of the Independent Expert. Where the Independent Expert has a conflict of interest, the OFT may remove a person from office as the Independent Expert or may appoint a substitute Independent Expert in relation to that Dispute.
29. Where in relation to a particular Dispute the Independent Expert indicates to the parties that he is unable to act, or where he resigns or is removed pursuant to paragraph 28 above, Imerys or the Customer may request the OFT to, or the OFT may on its own initiative, select a person to act as substitute Independent Expert.
30. In the event that a substitute Independent Expert is appointed as a result of the original Independent Expert ceasing to be independent as described in paragraph 19 or for any other reason, any directions or decisions made by the original Independent

Expert shall remain effective unless reviewed by the substitute Independent Expert in which case all time scales shall be recalculated from the date of the substitution.

31. If requested by the substitute Independent Expert, and in so far as it is reasonably practicable, the parties shall supply him with copies of the instructions as per paragraph 11 and all documents and information which they had made available to the previous Independent Expert.

Powers of the Independent Expert

32. The Independent Expert shall conduct such tests as he considers reasonable and appropriate on samples of the Initial Grade and the Identified Alternative Grade, having regard to the considerations set out in relation to the Independent Expert's Decision under paragraph 38(a) and (b) and the nature of any Reformulation Work agreed between Imerys and the Customer pursuant to paragraph 5.3 of the Undertakings. Imerys shall provide such samples of the Initial Grade and the Identified Alternative Grade as the Independent Expert may reasonably request for the purpose of testing free of charge. Imerys and the Customer shall provide such access to their respective production and laboratory facilities as the Independent Expert may reasonably request for the purpose of testing free of charge.
33. The Independent Expert shall take the initiative in ascertaining the facts necessary to determine the Dispute, and shall decide on the procedure to be followed. The Independent Expert shall have the power to issue written directions in relation to any matter falling within the scope of his functions. In particular he may:
 - (a) request further written comments from either of the parties supporting or supplementing the Dispute Notice or Instructions;
 - (b) request any party to the Dispute to create and supply him with such product samples, documents and information as he may reasonably require (other than documents that would be privileged from production to a court);
 - (c) meet and question any of the parties to the Dispute and their representatives;
 - (d) obtain and consider such representations, submissions and other external information as he requires, including from the OFT; and
 - (e) give directions as to the timetable for determining the Dispute.
34. The parties shall comply with any request or direction of the Independent Expert in relation to the adjudication.
35. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the Independent Expert made in accordance with his powers, fails to produce any product sample, document, information or written comments requested by the Independent Expert, or in any other way fails to comply with a requirement under these provisions relating to the adjudication the Independent Expert may:
 - (a) continue the adjudication in the absence of that party or of the document, information or written comment requested;
 - (b) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed; and/or

(c) with the consent of the OFT, refuse to determine the Dispute.

36. Where the Independent Expert considers it reasonable and necessary for the fulfilment of its functions to appoint advisers or representatives, it shall amend the Quotation accordingly and provide the names, hourly rates and estimated number of hours work that person or persons will perform on the Dispute. The Independent Expert shall provide Imerys and the Customer with a copy of the amended Quotation and accompanying information and he shall obtain the consent of each of Imerys and the Customer before instructing or appointing such person or persons and Imerys shall notify the OFT in writing of any appointment under this paragraph. In the event that consent is not forthcoming from either Imerys or the Customer, the OFT shall determine whether in the circumstances the person or persons shall be appointed and the terms of that appointment. Paragraphs 19, 20, 27(a), 28 and 46 to 56 inclusive of this Dispute Resolution Scheme shall apply to any advisers or representatives appointed by the Independent Expert in the same way as they apply to the Independent Expert.
37. The Independent Expert shall consider all documents and information submitted to him by any of the parties to the Dispute, the results of the testing referred to in paragraph 32 above, and such other information as he considers relevant and shall make available to the parties any documents and information to be taken into account in reaching his decision (subject to any omissions or redactions considered appropriate by Imerys or the Customer for reasons of commercial confidentiality).

Independent Expert's decision

38. Pursuant to paragraph 22, the Independent Expert shall decide whether, in his reasonable professional opinion, an Identified Alternative Grade is a Suitable Alternative Grade, having regard to:
- (a) whether the Identified Alternative Grade is consistent with the relevant specifications and targets supplied by the Customer and used by Imerys as part of any Reformulation Work conducted pursuant to paragraph 5.3 of the Undertakings; and
 - (b) whether the Identified Alternative Grade is suitable to meet the Customer's pre-existing requirements or other requirements as agreed between Imerys and the Customer, for the Performance-Mineral Application in which the Initial Grade is used as communicated to and/or agreed by Imerys during the Reformulation Work.
39. As soon as possible after he has reached a decision, the Independent Expert shall provide a written decision including reasons for his decision and serve a copy of this decision on Imerys, the Customer and the OFT.

Timing of the Independent Expert's decision

40. Unless the Independent Expert considers that there are special reasons why it cannot do so, or the Independent Expert and all parties to the Dispute agree an alternative time period, the Independent Expert shall give his decision not later than two months after confirming his ability to act pursuant to paragraph 12 above.
41. Where the Independent Expert fails, for any reason, to deliver his decision in accordance with paragraphs 38 and 39 above within two months of confirming his ability to act pursuant to paragraph 12, Imerys or the Customer may request the OFT

to name a substitute Independent Expert to determine the Dispute in accordance with paragraph 29.

Effects of decision

42. The decision of the Independent Expert shall be final and binding on Imerys and the Customer, except in the case of fraud, or where a decision is made in bad faith or is so clearly and manifestly erroneous on its face that it would be unconscionable for it to stand.

Independent Expert's costs

43. The reasonable fees and expenses of the Independent Expert and any advisers of representative appointed by him in accordance with paragraph 36 shall be paid by Imerys.
44. Imerys shall, within 30 days of receipt of a detailed invoice, pay the Independent Expert:
 - (a) remuneration for the time reasonably and properly spent by the individuals identified in accordance with paragraphs 12 and 36 above at their hourly rates, or such other amount as the OFT may determine is reasonable; and
 - (b) his reasonably and properly incurred travelling and other expenses provided that such expenses are evidenced by appropriate receipts.
45. In the event of any disagreement between Imerys and the Independent Expert, the OFT shall determine (after hearing Imerys and the Independent Expert in such manner as the OFT considers reasonable) whether any fees or expenses have been reasonably and properly incurred, having regard to any Quotation provided by the Independent Expert in accordance with paragraphs 12 and 36.

Immunity

46. Neither the Independent Expert, nor his staff, employees and agents (including advisors and representatives) are to be liable for anything done or omitted in the discharge or purported discharge of his functions as the Independent Expert unless the act or omission is in bad faith.

Disclosure of Information

47. Paragraphs 48 to 56 shall survive following the determination of a Dispute or the termination of an Independent Expert's appointment.
48. Without prejudice to any confidentiality agreement that may be entered into in connection with this Dispute Resolution Scheme, Imerys, the Customer and the Independent Expert shall hold in strict confidence any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential and proprietary nature relating to Imerys and/or the Customer and made available to him in connection with the Dispute Resolution Scheme. Nothing in this paragraph shall prevent the Independent Expert from disclosing any information received by it to the OFT if required by the OFT.

49. Each of Imerys, the Customer and the OFT may disclose to the Independent Expert any information or document which it holds (whether pursuant to the Undertakings or otherwise) which it considers may be relevant to, and assist the Independent Expert in, the carrying out of his functions.
50. For the purposes of paragraphs 51 to 56 of this Dispute Resolution Scheme:
- (a) specified information is information which comes to the Independent Expert in connection with the exercise of any function it has under or by virtue of the Undertakings and the Dispute Resolution Scheme; and
 - (b) required consent shall be construed in accordance with sections 239(2) to (5) of the Act.
51. Where specified information relates to the affairs of an individual or the business of an undertaking, such information must not be disclosed during the lifetime of the individual, or while the undertaking continues in existence, unless the disclosure is permitted under paragraph 48. However, this paragraph does not prevent the disclosure of any information which has on an earlier occasion been disclosed to the public in circumstances that do not contravene this paragraph or any other enactment or rule of law prohibiting or restricting the disclosure of the information.
52. The Independent Expert may disclose specified information to which paragraph 49 relates in the following circumstances:
- (a) if the Independent Expert obtains each required consent;
 - (b) if the disclosure is made for the purpose of facilitating the exercise by the Independent Expert of any function he has under or by virtue of the Undertakings; if the information is disclosed to another person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of the Act or the Undertakings; or
 - (c) if the disclosure is required by law or regulation.
53. If information is disclosed in the circumstance described in paragraph 52(b) so that it is not made available to the public, it must not be further disclosed by a person to whom it is disclosed other than with the agreement of the Independent Expert for the purpose of facilitating the functions of the Independent Expert under the Undertakings.
54. Information disclosed in the circumstance described in paragraph 52(c) must not be used by the person to whom it is disclosed for any purpose other than a purpose relating to a function of that person under or by virtue of the Act or the Undertakings.
55. Before disclosing, or directing Imerys or the Customer to disclose, any specified information, the Independent Expert is required to have regard to the following three considerations:
- (a) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Independent Expert thinks is contrary to the public interest;
 - (b) the need to exclude from disclosure (so far as practicable):
 - (i) commercial information whose disclosure the Independent Expert thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

- (ii) information relating to the private affairs of an individual whose disclosure the Independent Expert thinks might significantly harm the individual's interests;
 - (c) the extent to which the disclosure of the information mentioned in paragraphs 55(b)(i) or (ii) is necessary for the purpose for which the Independent Expert is permitted to make disclosure.
- 56. Where a party provides information to the Independent Expert, he (or any other party to which the information relates) may make known to the Independent Expert if he considers that all or any part of that information should not be disclosed having regard to paragraphs 55(a) and (b). The Independent Expert shall allow that party (and any other party to which the information relates) an opportunity to make representations and shall obtain the consent of the OFT prior to disclosing, or directing Imerys or the Customer to disclose, any such information.

Ancillary matters

- 57. The Independent Expert shall bring to the OFT's immediate attention any matter that gives rise to a reasonable suspicion on his part that:
 - (a) Imerys is not complying with the Undertakings or this Dispute Resolution Scheme; or
 - (b) a Customer is not complying with this Dispute Resolution Scheme.

SCHEDULE 1

List of approved Independent Experts

1. In respect of paints and coatings customers, the Paint Research Association:

Paint Research Association
[✂]
Technical Director
14 Castle Mews
High Street
Hampton
Middlesex

2. In respect of adhesives and sealants customers, a consultant nominated by the British Adhesives and Sealants Association:

British Adhesives and Sealants Association
[✂]
5 Alderson Road
Worksop
Nottinghamshire
S80 1UZ

3. In respect of rubber and plastics customers, the Rubber and Plastics Research Association:

Rubber and Plastics Research Association
[✂]
Consultancy Director at Smithers Rapra & Smithers Pira Ltd
Smithers Rapra
Shawbury
Shrewsbury
Shropshire
SY4 4NR

Form of Dispute Notice

To: [Imerys Minerals, Address]

From: [Customers, Address]

[Date]

Dear [●]

[Customer name] was served with a Suitability Notice on [date] in accordance with the Final Undertakings given by Imerys to the Competition Commission and accepted on [date] 2013 (the Undertakings).

As set out in the Suitability Notice, which is appended to this Notice, Imerys indicated that it would supply an Identified Alternative Grade ([insert name]), which it considers a Suitable Alternative Grade to the Initial Grade ([insert name]) from [date].

As per paragraph 6 of the Undertakings and paragraph 3 of the Dispute Resolution Scheme, [Customer name] hereby serves notice on Imerys initiating a Dispute and requesting that an Independent Expert determine whether the Identified Alternative Grade is a Suitable Alternative Grade to the Initial Grade.

[Customer sets out the specific issues in dispute as per paragraph 7 of the Dispute Resolution Scheme]

In serving this Notice [Customer name] agrees to be bound by the terms of the Dispute Resolution Scheme at Appendix 6 to the Undertakings.

[Customer]

Form of Suitability Notice

[Customer name and address]

Dear [●]

Imerys currently supplies you with [Initial Grade] pursuant to the Final Undertakings given by Imerys to the Competition Commission and accepted on ● 2013 (the Undertakings), the text of which is appended to this letter and available at [include link to the OFT/CMA website].² This is a Suitability Notice pursuant to paragraph 5.8 of the Undertakings.

The Undertakings allow Imerys to supply you with a Suitable Alternative Grade to [Initial Grade] where certain conditions are met (see in particular, paragraph 5 of the Undertakings). The Undertakings will apply to the supply of a Suitable Alternative Grade in the same way as they apply to the supply of [Initial Grade].

On [date], Imerys sent to you a Transition Notice pursuant to paragraph 5.1 of the Undertakings, which stated that Imerys intended to work with you to identify an alternative grade to [Initial Grade] that is suitable for use in your production processes. Following the Reformulation Work Imerys has carried out with you pursuant to paragraph 5.3 of the Undertakings, Imerys now considers that [Identified Alternative Grade] (the Identified Alternative Grade) is a Suitable Alternative Grade to [Initial Grade], and intends to supply you with [Identified Alternative Grade] instead of [Initial Grade] from [date], which is to be no sooner than 30 calendar days from the date of this Suitability Notice even if you do not initiate a Dispute under the Undertakings. A product specification sheet for [Identified Alternative Grade] is attached to this Suitability Notice.

If you do not consider that [Identified Alternative Grade] is a suitable replacement for [Initial Grade] for use in your production processes, you may ask an Independent Expert to determine whether [Identified Alternative Grade] is a Suitable Alternative Grade (a Dispute), with Imerys paying the costs of the Independent Expert. In order to initiate a Dispute, you must serve a Dispute Notice on Imerys within 30 calendar days of the date of this Suitability Notice. A template Dispute Notice can be found at Annex A to the attached Dispute Resolution Scheme. Further details of the Dispute Resolution Scheme are set out in paragraph 6 of the Undertakings and Appendix 6 of the Undertakings.

If the Independent Expert subsequently determines that the Identified Alternative Grade is a Suitable Alternative Grade, you will have 90 calendar days' notice that the Undertakings will apply to the Suitable Alternative Grade instead of the Initial Grade.

Yours sincerely

[Imerys]

² All terms used in this letter gave the meaning set out in the Undertakings.

Form of Initial Notice

[Customer name and address]

By Registered Post

Dear [●]

As you will be aware, the Competition Commission published its report entitled *Imerys Minerals Limited and Goonvean Limited* on 10 October 2013 (the Report). In the Report, the CC concluded that:

- the completed acquisition by Imerys Minerals of the kaolin business of Goonvean had resulted in the creation of a relevant merger situation;
- the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the market for the supply of kaolin for performance-mineral applications within the UK;
- the CC should take action to remedy the SLC and the adverse effects likely to arise from it; and
- undertakings should be given to the CC to give effect to the remedy identified by the CC in Section 9 of the Report.

On [●] 2013, following consultation with customers on draft undertakings, the CC accepted Final Undertakings given by Imerys pursuant to the Enterprise Act 2002 (the Undertakings), a copy of which are enclosed with this letter.³ In summary, the Undertakings state that:

- [Summarise – price, grades, transition to new grades, transport costs, maximum annual volume, dispute resolution, terms and conditions]

In accordance with paragraph 7 of the Undertakings, Imerys is sending you this Initial Notice to inform you that the Undertakings will apply to the following Price Controlled Product(s) supplied to [Customer]:

Grade	Packaging	Maximum annual volume	Ex-works price (until 31 December 2015)	Delivery location	Payload	Incoterm	Delivery cost (until 31 December 2013)
●	●		●	●	●	●	●

If you wish to be supplied with these Price Controlled Product(s), the Undertakings do not change your ability to have annual negotiations with Imerys over terms of supply. However, in accordance with the Undertakings, Imerys cannot charge above the ex-works price cap for volumes up to the Maximum Annual Volume. Volumes above this threshold are not protected by the price cap and are therefore subject to negotiation with Imerys to agree a price for such volumes. We will notify you each calendar year, in advance of any price negotiations, of the price cap that will apply to the Price Controlled Product(s).

³ All terms used in this letter have the meaning set out in the Undertakings.

Do not hesitate to contact us if you have any questions.

Yours sincerely

[Imerys]

Product specification sheets for Initial Grades



Requirements for third party hauliers operating from Imerys's facilities

1. These requirements apply to all third party hauliers operating from Imerys's facilities:
 - (a) when they are outside of their vehicle, drivers must wear protective eyewear, a hard hat, a high-visibility jacket or vest and safety shoes;
 - (b) drivers must comply with all safety signs and directives (eg no smoking and speed limits);
 - (c) drivers and vehicles must comply with all relevant laws and regulations; and
 - (d) drivers must comply with any instructions given by Imerys to enable the safe and efficient operation of Imerys's facilities.
2. Instructions relating to the individual order will be communicated by Imerys to the Customer's purchasing representative or as part of the product availability and collection date confirmation, and/or directly by Imerys to the haulier.
3. These instructions may include:
 - (a) details of the 'timed booking slot' during which the haulier's vehicle must be available for loading; and
 - (b) specific instructions to ensure that the haulier has the appropriate equipment to carry the load safely and securely.
4. Imerys reserves the right to refuse to load any vehicle where the haulier and/or driver fail to comply with the above requirements. In addition, any driver failing to comply with the above requirements will be reported by Imerys to their employer and may be requested to leave the site.

Form of annual reporting of prices and volumes of Price Controlled Products

<i>Customer</i>	<i>Customer Site</i>	<i>Incoterm</i>	<i>Packaging</i>	<i>Pack configuration (all non-bulk on pallets)</i>	<i>Typical Payload mt</i>	<i>Invoice currency</i>	<i>Ex-Works Price in [previous year]</i>	<i>Ex-Works Price Cap in [Year] GBP</i>	<i>Average Ex-Works Price charged to Customer in [year] GBP</i>	<i>Delivery Cost agreed with Customer for [year] GBP/mt</i>	<i>Average Delivery Cost charged to Customer in [year] GBP/mt</i>	<i>Total additional charges paid by Customer GBP/mt</i>	<i>Maximum Annual Volume mt</i>	<i>Volume supplied mt</i>

Notes:

1. The Ex-works Price Cap column will set out how the Ex-works Price Cap in the year has been calculated from the Ex-Works Price Cap in the previous year.
2. 'Total additional charges' are those charges permitted by the Undertakings (eg where a Customer changes delivery requirements for an order from those on which Imerys obtained haulage quotes and based the Delivery Cost, such as requiring a Saturday delivery) which Imerys passes on as increased haulage costs without mark-up. These charges shall be explained in the annual compliance report pursuant to paragraph 9.2 of the Undertakings.