

**Carpenter Co./Recticel NV/SA Merger Inquiry**

**Proposed Phase 2 Remedy Option**

**7 September 2022**

**1. INTRODUCTION**

- 1.1 On 24 August 2022, the CMA Inquiry Group confirmed that it agreed to the formal acceptance by Carpenter Co. (Carpenter) and Recticel NV/SA (Recticel) of “concessions” in relation to the proposed acquisition by Carpenter of Recticel’s engineered foams business (REF). In particular, the parties have formally accepted that the transaction may be expected to result in a substantial lessening of competition (SLC) as a result of horizontal unilateral effects as identified in the CMA’s Phase 1 investigation in: (i) the supply of unconverted comfort foam in the UK; (ii) the supply of unconverted technical foam in the UK; and (iii) the supply of converted comfort foam in the UK (together, the “Conceded SLC”).
- 1.2 The parties propose the remedy option described in this submission for consideration by the CMA. This option is a structural divestment containing existing UK businesses owned and operated by Recticel Limited, supplemented by data and information concerning relevant R&D projects, standard corporate separation transitional service and supply agreements (TSAs) and additional specific TSAs, as considered necessary by the CMA and as may be requested by the Divestment Purchaser to ensure the viability and competitiveness of the Divestment Business. The parties consider that it will address effectively the Conceded SLC and the resulting adverse effects.

**2. DESCRIPTION OF THE PROPOSED PHASE 2 REMEDY OPTION**

***REF UK’s Upstream Comfort and Technical Foam and Downstream Converted Comfort Foam Activities (the Divestment Business)***

- 2.1 The remedy option proposed by the parties is the divestment by Carpenter to a single third-party purchaser (the Divestment Purchaser) of the following businesses (together, the Divestment Business):
- a) REF’s plant, assets and business in Alfreton (Derbyshire, UK), that manufactures and supplies unconverted flexible polyether polyurethane (PU) comfort and technical foam (Alfreton 1); and
  - b) REF’s plant, assets and business in Alfreton (Derbyshire, UK), that manufactures and supplies converted flexible polyether PU comfort foam (Alfreton 2).

- 2.2 The divestment would take place by way of a share sale<sup>1</sup> of Recticel Limited<sup>2</sup>. The Divestment Business would therefore include (but not be limited to) the following assets owned by Recticel Limited and used to operate Alfreton 1 and Alfreton 2:
- a) Production facilities and businesses in Alfreton 1 and Alfreton 2 (including relevant leasehold and freehold properties), machinery and inventory;
  - b) Operational staff of Recticel Limited;
  - c) Customer and supply contracts and customer lists;
  - d) Trademarks and brand names as well as trade names; and
  - e) Other certain key intellectual properties and licenses.
- 2.3 The remedy therefore includes the entirety of the flexible polyether PU foam production facility, assets and business which is owned and operated by Recticel Limited at Alfreton, Derbyshire, UK (Alfreton 1). A detailed description of the assets owned by Recticel Limited and used to operate Alfreton 1 and Alfreton 2 is included below, with further confidential details provided at Annex 1.
- 2.4 Alfreton 1's facility has a production area of [CONFIDENTIAL]m<sup>2</sup>. The facility has a Max Foam machine to produce flexible polyether PU foam (producing up to [CONFIDENTIAL]m long flexible PU foam blocks), an ABL G2 cutting line to produce short blocks, a loop slitter to produce peeled foam rolls, in-house testing facilities, as well as onsite storage and a dedicated delivery fleet. The facility also produces foam trim (scrap). Alfreton 1 has chemical storage capacity of about [CONFIDENTIAL] MT ([CONFIDENTIAL] storage tanks). Alfreton 1 has a total capacity to produce approximately [CONFIDENTIAL] MT of foam per annum. In 2021, it produced [CONFIDENTIAL] MT (approximately [CONFIDENTIAL]% capacity utilisation). It holds ISO 9001 and Lower Tier COMAH Site certifications.
- 2.5 The remedy also includes the entirety of the flexible polyether PU comfort foam converting facility, assets and business which is owned and operated by Recticel Limited at Alfreton (Alfreton 2), which is located around 400m from Alfreton 1. Alfreton 2's facility has a production area of [CONFIDENTIAL]m<sup>2</sup> and was established in 2013 as a consolidation of four existing plants. Alfreton 2 converts flexible polyether PU foam to produce semi-converted products and components for the furniture and bedding industries (comfort

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<sup>1</sup> [CONFIDENTIAL].

<sup>2</sup> Recticel Limited is a wholly-owned subsidiary of Recticel. Recticel Limited was previously comprised of an insulation foam business (part of Recticel Insulation) and a technical PU foam converting facility in Corby, UK in addition to the Divestment Business. The insulation foam business and the Corby facility have already been carved out of Recticel Limited into entities within the Recticel group that do not form part of the Divestment Business. These entities are Recticel Insulation UK Limited (to be retained by Recticel and operated as part of Recticel Insulation) and Recticel Engineered Foams Corby Limited (to be acquired and retained by Carpenter pursuant to the acquisition of REF).

applications) and also manufactures some finished consumer products. The facility has a shuttle network for transporting block foam, a cutting line with more than [CONFIDENTIAL] Computer Numerical Control (CNC) PU foam cutting machines (which are able to cut on two axes), a dedicated manufacturing line for bedding products, a separate comfort foam cutting/production area, a separate healthcare mattress production area, a separate area for fabrication of small converted PU foam and composite components, and a polyester fibre products production line. It also carries out bailing of trim foam (scrap). It has a warehouse with an area of [CONFIDENTIAL]m<sup>2</sup> and [CONFIDENTIAL] pallet racking spaces. The warehouse holds raw materials (block foam) for production and converted components or final consumer products for transport to customers. The facility holds an ISO 9001 certification. In 2020, Alfreton 2 produced around [CONFIDENTIAL] SKUs for approximately [CONFIDENTIAL] different customers.

- 2.6 Alfreton 2 is a significant customer of Alfreton 1, accounting for around [CONFIDENTIAL]% of Alfreton 1's sales in 2021. Alfreton 2 purchases [CONFIDENTIAL] polyether PU comfort foam from Alfreton 1.
- 2.7 Confidential *pro forma* profit and loss (P&L) account information at plant level and a simplified *pro forma* balance sheet are at Annex 2. A non-confidential "teaser" relating to the Divestment Business is at Annex 3.

#### ***Additional Assets Relating to Current REF R&D Projects***

- 2.8 REF is engaged in certain R&D activities and, in addition to the Divestment Business, as considered necessary by the CMA and if required by the Divestment Purchaser, Carpenter will provide to the Divestment Purchaser data and information relating to relevant current<sup>3</sup> REF R&D projects (i.e. all relevant intellectual property rights (IPR)). This data and information relate to [CONFIDENTIAL] current projects which are not closed and which involve comfort foam (upstream/unconverted and converted) and polyether foam for sponge applications (upstream/unconverted; not converted) (also referred to as "polyether sponge foam").
- 2.9 In relation to such projects, Carpenter will provide all information held by REF as at closing of the sale to the Divestment Purchaser as follows:
  - a) Where the project is planned to benefit REF's UK operations only, a full transfer of rights with Carpenter retaining no rights.
  - b) Where the project is planned to benefit both REF's UK operations and REF's non-UK operations, a perpetual, irrevocable royalty-free licence to the Divestment Purchaser for UK applications only. Carpenter will retain rights outside the UK.<sup>4</sup> The license

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<sup>3</sup> Data and information arising out of completed projects which is used by the Divestment Business is already part of the intellectual property rights included with the Divestment Business.

<sup>4</sup> Where the project is not planned to benefit REF's UK operations, Carpenter would not transfer or licence any rights to the Divestment Purchaser.

would not impact Carpenter's ability to continue to practice and implement technology that Carpenter was developing or developed independently prior to the divestment.

- 2.10 As considered necessary by the CMA, the parties are prepared to warrant to the purchaser that all relevant R&D projects will be included within the Divestment Business.
- 2.11 These R&D projects have all been identified by Recticel as benefitting or being planned to benefit REF's UK operations and are the following:

[CONFIDENTIAL]

***Transitional Service and Supply Arrangements Relating to Corporate Separation***

- 2.12 In addition, as considered necessary by the CMA and if required by the Divestment Purchaser, Carpenter will enter into certain transitional service and supply arrangements (TSAs) with the Divestment Business. These would include the following TSAs relating to standard corporate separation issues<sup>5</sup>:
- a) Information technology support services (for a period up to [CONFIDENTIAL] months); and
  - b) Certain HR functions and corporate services (for a period up to [CONFIDENTIAL] months).
- 2.13 A detailed description of the confidential terms of these standard corporate separation TSAs is at Annex 4. It will be appreciated that virtually all business sales require similar TSAs.

***Additional Transitional Service and Supply Arrangements Relating to R&D and Chemical Supply***

- 2.14 In addition to the above, as considered necessary by the CMA and if required by the Divestment Purchaser, Carpenter will enter into certain TSAs designed to ensure the viability and competitiveness of the Divestment Business, including the following:
- a) R&D: Carpenter will provide R&D services to the Divestment Purchaser at its request (1) in relation to the R&D projects transferred to the Divestment Purchaser (see above) *and* (2) in relation to any new projects requested by the Divestment Purchaser. The new projects could include projects relating to comfort foam (unconverted and converted) or unconverted polyether sponge foam only. This would be "full service" R&D services on a fee-based contract basis, with Carpenter therefore providing the R&D using its own personnel, equipment and facilities for the benefit of the Divestment Purchaser. The amount of services would be capped at [CONFIDENTIAL] hours annually across all projects.

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<sup>5</sup> There may also need to be certain reverse TSAs provided to Recticel or Recticel Engineered Foams Corby Limited (to be acquired and retained by Carpenter) covering similar issues for a limited period.

Data and information (i.e. relevant IPR) would be provided to the Divestment Purchaser as follows:

- i. R&D relating to new projects: Full transfer to the Divestment Purchaser with Carpenter retaining no rights (because these are new projects requested by the Divestment Purchaser which Carpenter will be implementing for the Divestment Purchaser).
- ii. R&D relating to transferred projects which only benefit REF's UK operations: Full transfer to the Divestment Purchaser with Carpenter retaining no rights.
- iii. R&D relating to transferred projects which benefit REF's UK and non-UK operations: Carpenter will provide a perpetual, irrevocable, royalty-free licence to the Divestment Purchaser for UK applications only. Carpenter will retain rights outside the UK. The license would not impact Carpenter's ability to continue to practice and implement technology that Carpenter was developing or developed independently prior to the divestment.

Carpenter will implement appropriate firewalls and NDAs for individuals working on projects where Carpenter is not retaining any IPR in the projects, as described in more detail in Annex 5.

- b) Chemical supply: Carpenter will procure the supply to the Alfreton 1 facility of chemical input products and additives used by Recticel Limited in manufacturing flexible polyether PU foam at the Alfreton 1 facility. The chemical input products and additives that may be procured are limited to those that Recticel Limited used to manufacture flexible polyether PU foam at Alfreton 1 in the six-months prior to completion of the sale to the Divestment Purchaser. Excluded from the supply arrangement are chemical input products or additives for which Recticel Limited carried out negotiation and purchasing itself. There would be no minimum purchase obligation. The price to the Divestment Purchaser would be either the price as set out in the IHS Chemical Market Analysis monthly report as at [CONFIDENTIAL] prior to completion, or, for products not listed in that report, the price at which Carpenter purchases the product. In both instances, the price to the Divestment Purchaser also would include a fee to cover Carpenter's administrative costs plus Carpenter's delivery costs (if any<sup>6</sup>) in delivering to the Divestment Purchaser and the price would be adjusted as described in further detail in Annex 5.

This arrangement would therefore cover all chemicals and additives previously supplied under arrangements to which Recticel is the purchaser or which were otherwise arranged by Recticel. In relation to each individual class of product, Carpenter will provide a price quote to the Divestment Purchaser once the Divestment Purchaser informs Carpenter of its intention to make purchases of that individual class

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<sup>6</sup> It is usually the raw material supplier which delivers the material.

of product. Also in relation to each individual class of product, Carpenter would terminate supply of that product to the Divestment Purchaser once the Divestment Purchaser procured any supplies from a third party (and the Divestment Purchaser would be required to give notice to this effect).

- c) Negotiations for supply of chemicals: Carpenter will provide the Divestment Purchaser with a consulting arrangement to provide the expertise needed for the Divestment Purchaser to conduct its own negotiations with suppliers of chemicals, including, if necessary, conducting negotiations on behalf of the Divestment Purchaser.

2.15 Outlines containing confidential details of these additional TSAs are at Annex 5.

### 3. **IMPACT OF THE PROPOSED REMEDY OPTION**

- 3.1 As described above, the proposed remedy option is a structural divestment containing existing UK businesses owned and operated by Recticel Limited, supplemented by data and information concerning relevant R&D projects, standard corporate separation TSAs and additional specific TSAs designed to ensure as necessary the viability and competitiveness of the Divestment Business.
- 3.2 The Conceded SLC covers three markets and the related concerns as identified by the CMA in the Phase 1 investigation: (i) the supply of unconverted comfort foam in the UK; (ii) the supply of unconverted technical foam in the UK; and (iii) the supply of converted comfort foam in the UK. With respect to these markets, the CMA is of course aware that all comfort foam is polyether-based, while technical foam is either polyester- or polyether-based (but the vast majority is polyester-based). Comfort foam is mainly used for bedding and furniture applications, while technical foam is used for a wide range of differentiated industrial applications. Upstream foam is “converted” downstream for use in these applications (e.g. by cutting a block of upstream comfort foam for use in a mattress).
- 3.3 In relation to market (i) of the Conceded SLC (comfort foam), the divestment of the Alfreton 1 business to the Divestment Purchaser would remove the entire overlap between Carpenter and REF in the UK because, currently, all of REF’s sales in the UK of upstream comfort foam<sup>7</sup> are produced by Recticel Limited at Alfreton 1<sup>8</sup>. By divesting Recticel Limited, and thus Alfreton 1, the parties would therefore transfer the entirety of REF’s share of UK sales of upstream comfort foam to the Divestment Purchaser. This would “create a new source of competition” to maintain the existing competitive position of three longstanding producers

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<sup>7</sup> For ease it has been assumed that upstream foam equates to “unconverted” foam as identified by the CMA. However, note that in practice, Alfreton 2 manufactures slabs and sheets (i.e. those types of unconverted comfort foam) from comfort foam blocks manufactured at Alfreton 1. This makes no difference to the remedy because Alfreton 2 is in any event included.

<sup>8</sup> In 2021, REF supplied a [CONFIDENTIAL] volume of [CONFIDENTIAL] MT of upstream comfort foam into the UK from the EU.

of upstream comfort foam with manufacturing facilities in the UK<sup>9</sup>. It is notable that Alfreton 1 is REF's only UK upstream foam manufacturing facility.

- 3.4 The inclusion of Alfreton 2 additionally would maintain for the Divestment Purchaser a captive source of demand for some of the flexible polyether PU comfort foam produced at Alfreton 1. It would also allow the Divestment Purchaser to be vertically integrated and maintain or expand the business of converting flexible polyether PU comfort foam in the UK and other products manufactured at Alfreton 2.
- 3.5 In relation to market (ii) of the Conceded SLC (technical foam), the parties submit that the divestment of Recticel Limited to the Divestment Purchaser would "clearly and comprehensively remove the SLC"<sup>10</sup>. This is because the parties' proposed divestment of Recticel Limited, which includes Alfreton 1, would transfer all of REF's UK production of upstream technical foam to the Divestment Purchaser, maintaining the existing competitive position of three longstanding producers of upstream technical foam, and specifically polyether sponge foam, with manufacturing facilities in the UK<sup>11</sup>.
- 3.6 By way of further background, the CMA found that technical foam is a differentiated product (paragraphs 30 and 97 of the Phase 1 decision), which is either polyester or polyether based and is used for a wide range of separate and distinct applications (including sponges and other products). The CMA noted, however, that Carpenter (in the UK and EU) only produces and sells standard polyether technical foam types (paragraph 98). The CMA found that "*In the UK, Carpenter and REF both sell conventional [i.e. standard] polyether-based technical foam (and in particular, technical sponge foam) [also referred to as polyether sponge foam]*" (paragraph 102). The CMA's decision focuses solely on competition in polyether sponge foam and makes no reference to competition between the parties for any other types of polyether technical foam products in the UK. Indeed, the CMA's competitive constraints analysis concludes that "*the Parties overlap and compete closely in the supply of a specific range of polyether-based technical foam (in particular, [polyether] technical sponge foam)*" (paragraph 109). The CMA's final conclusion on the technical foam theory of harm similarly reasons that the parties are "*close competitors for the supply of polyether-based technical foam (in particular, technical sponge foam)*" but is devoid of other examples of competition in polyether-based technical foam in this differentiated market.
- 3.7 The CMA's Issues Statement, published on 26 August 2022, further confirms that for unconverted technical foam, foam used for cleaning sponges is "the primary segment in which the Parties overlap" (paragraph 4(b)). As with the Phase 1 decision, the Issues

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<sup>9</sup> Merger remedies ¶ 3.37 ("The aim of divestiture is to address an SLC through the disposal of a business or assets from the merger parties to create a new source of competition (if sold to a new market participant) or to strengthen an existing source of competition (if sold to an existing participant independent of the merger parties).").

<sup>10</sup> Merger remedies n.34.

<sup>11</sup> [CONFIDENTIAL]

Statement does not reference any other segments of unconverted technical foam in which the Parties overlap.

- 3.8 Accordingly, and as recognized by the CMA, the parties are not close competitors with respect to other upstream technical foam sold into the UK (i.e. upstream *polyester* technical foam or *specialized* upstream polyether foam). There is thus no need for any remedy to address REF's imports of upstream technical foam because there was no pre-transaction competition related to this foam to preserve. This was recognised in the CMA's Phase 1 decision discussed above and accepted by the CMA in its Decision to Refer (which as noted below did not raise concerns about the product scope of the Phase 1 UIL offer). The remedy "clearly and comprehensively remove[s] the SLC"<sup>12</sup> by maintaining the existing competitive position with respect to upstream technical foam in the UK, and specifically the competitive position with respect to polyether sponge foam.
- 3.9 In relation to market (iii) of the Conceded SLC (converted comfort foam), the divestment of Recticel Limited to the Divestment Purchaser would remove the entire overlap between Carpenter and REF in the UK. This is because all of REF's converted comfort foam sold in the UK is manufactured and supplied from Recticel Limited's Alfreton 2 facility. Therefore, by divesting Recticel Limited to the Divestment Purchaser, the parties would transfer the entirety of REF's share of UK sales of converted comfort foam to the Divestment Purchaser. This would "create a new source of competition" to maintain the existing competitive position.
- 3.10 The parties therefore consider that the proposed remedy option will address effectively the Conceded SLC and the resulting adverse effects. Set out at Annex 6 is [CONFIDENTIAL].
4. **THE DIVESTMENT PURCHASER AND DIVESTITURE RISKS**
- 4.1 As noted, the remedy option proposed by the parties is the divestment by Carpenter to a single third-party purchaser (the Divestment Purchaser) of the Divestment Business, data and information relating to relevant current REF R&D projects, standard corporate separation TSAs and certain additional TSAs.
- 4.2 Set out at Annex 7 is [CONFIDENTIAL].

MCGUIREWOODS LONDON LLP  
7 SEPTEMBER 2022

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<sup>12</sup> Merger remedies n.34.



ANNEX 1

DESCRIPTION OF THE DIVESTMENT BUSINESS

1. The **Divestment Business** consists of the flexible polyether polyurethane (PU) foam production facility, assets and business which is currently owned and operated by Recticel Limited<sup>13</sup> at Alfreton 1 (Derbyshire, United Kingdom) and the flexible polyether PU comfort foam converting facility, assets and business which is currently owned and operated by Recticel Limited at Alfreton 2 (Derbyshire, United Kingdom). Alfreton 1 and Alfreton 2 consist of tangible and intangible assets which contribute exclusively to the operation of the Alfreton 1 and/or Alfreton 2 parts of the Divestment Business or are necessary to ensure the viability and competitiveness of the Divestment Business and are as identified in this Annex 1 below.
2. The divestment will be implemented through the sale or licence or assignment of:
  - a. Recticel Limited<sup>14</sup>, which will transfer to the Divestment Purchaser in the form of a share sale.<sup>15</sup>
    - i. The agreement with the Divestment Purchaser for the sale of Recticel Limited will include an obligation on Carpenter and its affiliates for three months after closing of the sale of the Divestment Business to the Divestment Purchaser (Closing) not to, directly or indirectly, solicit or entice, or attempt to solicit or entice (commonly referred to as making “active sales” efforts), any of the 2021 customers of Alfreton 1 or Alfreton 2 for purposes of diverting their business or services from the Divestment Purchaser. This obligation shall not apply in relation to any of the customers which are at Closing existing customers of Carpenter or its affiliates or have purchased from Carpenter or its affiliates in the three-year period prior to Closing. This obligation shall also not restrict Carpenter and its affiliates from making sales or quoting for sales or services in response to a request from any customer (commonly referred to as “passive sales” efforts).
  - b. Any other tangible and intangible property forming part of Alfreton 1 and/or the Alfreton 2 part of the Divestment Business which is not owned by Recticel Limited and which is identified below in this Annex 1.

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<sup>13</sup> Recticel Limited is a company registered in England and Wales, with number 00665376 and a registered office is at Bluebell Close, Clover Nook Industrial Park, Alfreton, Derbyshire, DE55 4RD, United Kingdom.

<sup>14</sup> The business formerly operated by Recticel Limited at Corby, UK, which is a technical polyurethane foam converting facility, is not included in the Divestment Business and has already been carved-out of Recticel Limited into a new company (Recticel Engineered Foams Corby Limited), which will be acquired by Carpenter. The business formerly operated by Recticel Limited at Stoke-on-Trent, UK, which is an insulation business, is also not included in the Divestment Business and has also already been carved-out of Recticel Limited into a new company (Recticel Insulation UK Limited), which will be retained by Recticel NV/SA.

<sup>15</sup> [CONFIDENTIAL].

3. In accordance with paragraph 1 of Annex 1, the Divestment Business includes but is not limited to the following tangible assets, as they relate to the Alfreton 1 part of the Divestment Business and/or the Alfreton 2 part of the Divestment Business:
  - a. The following properties (together, the Divestment Business Properties), which house various production, sales, finance, and administrative functions and which are necessary to, and will transfer with, the Divestment Business, namely:
    - i. The leasehold and freehold properties used for the Alfreton 1 part of the Divestment Business at 1 Bluebell Close, Clover Nook Industrial Park, Alfreton, DE55 4RD, United Kingdom (Alfreton 1 Properties);
    - ii. The leasehold properties used for the Alfreton 2 part of the Divestment Business at Azalea Close, Clover Nook Industrial Estate, Alfreton, DE55 4QX, United Kingdom (Alfreton 2 Properties);
  - b. All machinery, equipment, tools, tangible personal property, inventory, raw materials, work-in-process, finished goods, goods in transit and packaging materials that are utilized by the Divestment Business as reflected in its books and records as of Closing, including those located at the Alfreton 1 Properties and Alfreton 2 Properties.
  - c. The products and services developed, licensed, sold, provided or offered by the Divestment Business at the date of Closing.
4. In accordance with paragraph 1 of Annex 1, the Divestment Business includes but is not limited to the following intangible assets, as they relate to the Alfreton 1 part of the Divestment Business and/or to the Alfreton 2 part of the Divestment Business:
  - a. Supply contracts, customer contracts, customer orders, leases, agreements, undertakings, understandings and commitments. For those contracts subject to change of control provisions or requiring consent before assignment or transfer, Carpenter will use reasonable endeavours to obtain the consent of the relevant contracting parties to ensure the Divestment Purchaser receives the benefit of all rights and obligations under those contracts. Where such approvals cannot be obtained within a period agreed to between Carpenter and the Divestment Purchaser, Carpenter will cooperate with the Divestment Purchaser to establish an alternative arrangement;
  - b. All receivables owed to the Divestment Business or Carpenter in relation to the Divestment Business as of Closing;
  - c. All rights under or with respect to any claims, causes of action, choses in action, rights of recovery, rights of set-off, credit, defences or counterclaims and other rights of recoupment, including recoveries by settlement, judgment or otherwise in connection therewith;

- d. Any advertising and promotional materials, all business cash and all bank accounts held by Recticel Limited, all third-party insurance policies, transferrable guarantees, indemnities and similar rights, as well as rights to refunds or rebates;
- e. Any assumed benefit plans, all assets of or relating to these plans (including all assets held in a trust, fund or account in any form) and any insurance, administration or other contracts relating thereto, along with any accounts, plan documents (and amendments and modifications thereto), plan descriptions and summaries, opinion or determination letters and correspondence with any governmental authorities and other records or information regarding these benefit plans to the extent available;
- f. All files, documents, data, books and records that are in the possession or control of Recticel Limited and REF, including customer and supplier lists, invoices and purchase orders, production data, cost records, sales and pricing data, supplier records, product data, manuals and literature, technical information, drawings, specifications and other engineering data, correspondence, merchandising, promotional materials, sales materials, creative materials, studies, reports and other business records that, in each case, to the extent related to, or to the extent used in, the operation of the Divestment Business (together, the Divestment Business Records), provided, however, that the Divestment Business Records will not include any (a) employee-related or employee-benefit-related files or records, employee-benefit plans or documents relating to commitments and arrangements with employees of Recticel, REF, Carpenter or their respective affiliates, except for personnel files and other employee information for continuing employees that are permitted to be transferred by applicable law or (b) corporate records or tax returns of Recticel, REF, Carpenter or any of their respective affiliates (other than Recticel Limited). Carpenter may retain a copy of such files, documents, data, books and records where strictly necessary for legal compliance purposes;
- g. In line with applicable employment laws, contractual provisions and other relevant legislation, all employees of Recticel Limited as of Closing;
- h. The Divestment Purchaser shall have the right to offer employment in the Divestment Business, upon Closing, to any individuals not transferred with Recticel Limited or by operation of law and who are employed at Closing by Recticel Limited or the rest of REF who dedicate more than fifty per cent (50%) of their working time on a full-time equivalent basis to the normal course activities of the Divestment Business. Carpenter shall co-operate with the Divestment Purchaser in good faith to make this possible (subject to employment laws and other applicable legislation). If these individuals do not accept the Divestment Purchaser's offer, or if an offer is not made, Carpenter will use its best efforts to make such services available to the Divestment Purchaser, on an exclusive basis, for a period of up to one (1) year after Closing, at the option of the Divestment Purchaser. In the event that this latter arrangement takes place, Carpenter would establish suitable "firewall" protection to prevent the transfer of commercially sensitive information to Carpenter.

- i. Brand names and other intellectual property rights (IPR) to the extent owned by the Divestment Business or which it has the benefit of, including trademarks, designs, patents, domain names, trade secrets, know-how, copyrights and technology. As necessary, for brand names and other IPR that is not owned by the Divestment Business but are used by the Divestment Business and are necessary to ensure the viability and competitiveness of the Divestment Business, Carpenter agrees to license the brand names or other IPR on a perpetual, irrevocable and royalty-free basis and for UK applications only. The intellectual property rights owned by the Divestment Business or which it has the benefit of include without limitation:
  - A patent for TRIFLEX owned by Recticel Limited;
  - The benefit of a patent licence [CONFIDENTIAL];
  - The benefit of a trade-mark licence [CONFIDENTIAL].
- j. Information technology that is used in and necessary to ensure the viability and competitiveness of the Divestment Business;
- k. Licenses, permits and authorisations necessary for the lawful conduct or the viability and competitiveness of the Divestment Business or the use, ownership, possession or operation of the transferred tangible and intangible assets described in this Annex 1 or related to the ownership and operation of the Divestment Business at the Alfreton 1 Properties or the Alfreton 2 Properties (insofar as legally permissible to transfer such licenses, permits and authorisations, and subject to grant of required consents or approvals by relevant governmental organisations);<sup>16</sup>
- l. If there are any assets, property, claims, or interest which are not covered by this Annex 1 but which are both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to the Divestment Purchaser as part of the Divestment Business, at no additional cost.

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<sup>16</sup> As necessary, Carpenter will use reasonable endeavours to assist the Divestment Purchaser to obtain relevant licenses, permits and authorisations in its own name and, if necessary, will cooperate to the extent reasonably possible to enable the Divestment Purchaser to operate the Divestment Business under the existing licenses, permits or authorisations pending grant of a new license, permit or authorisation so far as needed.

ANNEX 2

PRO FORMA P&L ACCOUNT AND BALANCE SHEET

*Annex 2, Table 1: Pro forma profit and loss account information at plant level.*

<b>Alfreton 1</b>	<b>FY19A</b>	<b>FY20A</b>	<b>FY21 A</b>	<b>JULY YTD 22A</b>	<b>FY22F</b>	<b>FY23F</b>	<b>FY24F</b>
Net Revenue	<b>[CONFIDENTIAL]</b>						
SCOGS							
Gross Margin							
EBITDA							
Depreciation							
EBIT							
Source: REF Management P & L							

<b>Alfreton 2</b>	<b>FY19A</b>	<b>FY20A</b>	<b>FY21 A</b>	<b>JULY YTD 22A</b>	<b>FY22F</b>	<b>FY23F</b>	<b>FY24F</b>
Net Revenue	<b>[CONFIDENTIAL]</b>						
SCOGS							
Gross Margin							
EBITDA							
Depreciation							
EBIT							

Source: REF Management P & L							
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Notes:

- All figures in £000s
- Recticel extracted the P&L data from the by-plant transactional data on its financial recording system (which goes up to gross margin level), then consolidated this as necessary.
- Recticel allocated “other than plant” costs, such as sales, marketing and administrative costs, between the plants in proportions based on each plant’s turnover.
- Forecasts are as at July 2022.

***Annex 2, Table 2: Recticel Limited (Alfreton 1 and Alfreton 2) pro forma balance sheet as at 31 May 2022***

Category	Item	Value (£)	Totals (£)
Assets	Long term assets	[CONFIDENTIAL]	
	Cash		
	Financial assets I/C		
	Other capital employed		
	Working capital (net)		
Liabilities	Financial liabilities I/C		
	Liabilities long term		
<i>Net assets</i>			
Capital and reserves	Equity		
	Net profits		

<i>Total capital and reserves</i>		
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## Notes:

- “Financial assets I/C” is an intercompany cash pooling arrangement used for financing by Recticel group. For Recticel Limited, this is a receivable.
- Net profits will stay in Recticel Limited and relate to the business for YTD 31 May 2022 (i.e. five months). This includes the Recticel Insulation UK and Corby operations for part of the year (which are now in the separate entities Recticel Insulation UK Limited and Recticel Engineered Foams UK Limited respectively).

ANNEX 3

NON-CONFIDENTIAL “TEASER” DOCUMENT RELATING TO THE  
DIVESTMENT BUSINESS

Subject to Continuing Review and Revision  
Materials Herein are for Informational Discussion Purposes Only Subject to Recipient Diligence



# Project Alpha

## U.K. Polyurethane Foam Business Acquisition Opportunity

Teaser

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## Disclaimer

This Presentation has been prepared solely for informational purposes and is being furnished through Ducera Partners LLC ("Ducera"), at the direction of Carpenter Co. ("Carpenter") solely for use by prospective purchasers of Recticel Limited's Alfreton 1 & 2 operations (the "Company") and is subject to the terms and conditions of the previously executed Confidentiality Agreement ("Confidentiality Agreement") between Carpenter and the recipient. The purpose of this Presentation is to assist the recipient in deciding whether it wishes to participate in a transaction to acquire the Company (the "Transaction"). No representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted, by Ducera or by any of its officers, directors, employees, or agents as to or in relation to the accuracy or completeness of any information contained herein. In furnishing this information, Ducera undertakes no obligation to provide the recipient with access to additional information, to update any information contained herein, or to correct any inaccuracies herein. These materials and the information contained herein are confidential and may not be disclosed publicly or made available to third parties without the express written consent of Ducera.

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## Polyurethane Foam Acquisition Opportunity

- Ducera Partners LLC ("Ducera") is representing Carpenter Co. ("Carpenter") in soliciting acquisition interest in 100% of the stock of Recticel Limited, a polyurethane foam production and conversion business located in Alfreton, United Kingdom as a divestment in connection with Carpenter's publicly announced acquisition of Recticel NV/SA's engineered foams business
- Recticel Limited is a vertically-integrated U.K. based flexible polyether polyurethane foam business, with a foam production facility ("Alfreton 1") and a flexible polyether polyurethane comfort foam converting facility ("Alfreton 2")
  - Alfreton 1 manufactures and supplies flexible polyether polyurethane foam via block foam, peeled foam rolls, and foam trim
  - Alfreton 2 produces comfort foam sheets and slabs, converted comfort foam components, polyester fiber products and finished consumer products
- Recticel Limited provides an opportunity to acquire an attractive, stand-alone, foam production and conversion business, including the respective assets, employees, IP, and infrastructure to operate the business in the U.K. market

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## Ducera Partners Contact Information

### Process Overview

- Ducera Partners is facilitating a sale process of Recticel Limited on behalf of Carpenter
- Ducera Partners is requesting initial perspectives on interest in Project Alpha, upon which additional information process steps can be evaluated, including review of a non-disclosure agreement ("NDA")
- Additional communications, information requests, or discussions regarding Project Alpha should be directed to Ducera Partners (contact info below)

# Ducera

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## ANNEX 4

## CORPORATE SEPARATION TSAS

In each case as considered necessary by the CMA and if required by the Divestment Purchaser, Carpenter will enter into arms-length arrangements under transitional services and supply agreements (TSAs) for the supply of the following transitional services so far as necessary to ensure the viability and competitiveness of the Divestment Business, for the maximum duration as shown<sup>17</sup>.

Category	Purpose of transitional services/supply agreement (TSA)	Anticipated Duration
<b>Information Technology</b>	As part of the arrangements for the acquisition by Carpenter of REF, Recticel will provide to Carpenter a TSA related to information technology support services to assist with and allow for the transfer of REF, to separate out information technology systems and to provide further relevant information technology support to Carpenter. Carpenter will provide to the Proposed Purchaser a TSA that will replicate those services as they relate to Recticel Limited. The parameters of the transfer and support services will depend significantly on the Divestment Purchaser and factors such as the Divestment Purchaser's current level of information technology support services, the information technology systems used by the Divestment Purchaser, and the compatibility of the Divestment Purchaser's systems with those of Recticel. This TSA (or one of the other TSAs) will allow for access to all relevant material referred to in paragraph 4 of Annex 1 which is held electronically and which would not otherwise be transferred to the	To be determined in conjunction with Divestment Purchaser (up to [CONFIDENTIAL] months from Closing)

<sup>17</sup> Unless otherwise set out: where service arrangements under the TSAs replicate existing internal arrangements within REF, the types of services and prices under the TSAs will reflect the services and prices over the six-month period prior to Closing and other terms will reflect standard market practice; or, alternatively, such TSAs or reverse TSAs will replicate terms put in place between Recticel and Carpenter relating to similar arrangements for REF or Recticel group as part of the acquisition by Carpenter of REF.

	Divestment Purchaser and the ability and right to download and transfer such to the Divestment Purchaser.	
<b>Human Resources</b>	As part of the arrangements for the acquisition by Carpenter of REF, Recticel will provide to Carpenter a TSA related to certain human resources functions currently carried out at a group level by Recticel. Carpenter will provide to the Divestment Purchaser a TSA that will replicate those services as they relate to Recticel Limited, depending on the needs of the Divestment Purchaser.	To be determined in conjunction with Divestment Purchaser (up to [CONFIDENTIAL] months from Closing)
<b>Finance/Accounting/ Tax/Corporate Services</b>	As part of the arrangements for the acquisition by Carpenter of REF, Recticel will provide to Carpenter a TSA related to certain other group service functions currently carried out at a group level by Recticel. Carpenter will provide to the Divestment Purchaser a TSA that will replicate those services as they relate to Recticel Limited, depending on the needs of the Divestment Purchaser.	To be determined in conjunction with Divestment Purchaser (up to [CONFIDENTIAL] months from Closing)

ANNEX 5

OUTLINE OF ADDITIONAL PROPOSED TSAs

***R&D***

Carpenter and the Divestment Purchaser to enter into a TSA for research and development (R&D) support under the following conditions:

- Term: Up to [CONFIDENTIAL] years
- Services: Carpenter to provide additional R&D to the Divestment Purchaser at its request in relation to the existing R&D projects transferred to the Divestment Purchaser or any new R&D projects requested by the Divestment Purchaser in comfort foam (unconverted and converted) or unconverted polyether sponge foam.
  - Carpenter to provide the personnel, equipment and facilities to perform this R&D for the Divestment Purchaser.
  - Amount of total R&D services for all projects requested by the Divestment Purchaser (existing projects and new projects combined) capped at [CONFIDENTIAL] hours per year.
- Provision of developed intellectual property rights (IPR): Data and information (i.e. relevant IPR) would be provided as follows:
  - New projects requested by the Divestment Purchaser: Full transfer to the Divestment Purchaser with Carpenter retaining no rights.
  - R&D relating to transferred projects which only benefit REF's UK operations: Full transfer to the Divestment Purchaser with Carpenter retaining no rights.
  - R&D relating to transferred projects which benefit REF's UK and non-UK operations: Carpenter will provide a perpetual, irrevocable, royalty-free licence to the Divestment Purchaser for UK applications only. Carpenter will retain rights outside the UK. The license would not impact Carpenter's ability to continue to practice and implement technology that Carpenter was developing or developed independently prior to the divestment.
- Fee: Charge to be an agreed hourly rate.
- Payment: Net 30 days from the date of the invoice.
- Termination rights:
  - Material breach of contract that remains uncured after notice for 30 days.
  - Bankruptcy of the Divestment Purchaser.
- Governing law and jurisdiction: England & Wales law and courts (both exclusive).
- Firewall and NDAs: Carpenter to implement a firewall for individuals working on these projects that separates them from and restricts them from working on additional projects in the relevant product market that would have applications in the UK for one year after their work concluded (unless the subsequent project is also carried out for the Divestment Purchaser). In addition, relevant Carpenter employees will sign NDAs with terms commensurate with industry practice. NDAs are standard and would protect the information beyond the firewall period.
- Other: Other standard terms in equivalent R&D agreements will be provided.

*Chemical Supply*

Carpenter and the Divestment Purchaser to enter into a TSA for chemical supply under the following conditions:

- Delivery: To Alfreton 1 facility.
- Quantity: Requirements (as available) and no minimum purchase obligation.
- Ordering: Minimum 10 UK working days' notice before requested delivery date.
- Term: Up to [CONFIDENTIAL].
  - In relation to each individual class of product, the agreement would terminate once the Divestment Purchaser procured any supplies from a third party (and the Divestment Purchaser would be required to give notice to this effect).
- Products:
  - Any chemical input products and additives used by Recticel Limited in manufacturing flexible polyether polyurethane foam at Alfreton 1 in the six months prior to completion (but excluding any chemical input products or additives or any other products in relation to which negotiation and purchasing was carried out by Recticel Limited itself).
- Price:
  - Carpenter will provide any covered product listed in the IHS Chemical Market Analysis monthly report (IHS Report) to the Divestment Purchaser at a price that reflects the Europe Contract Market price for that product as at [CONFIDENTIAL] prior to closing, plus Carpenter's administrative fees and delivery costs (if any). Subsequent price changes during the TSA term will be based upon changes in the Europe Contract Market price as reported by the IHS Report. The price to the Divestment Purchaser for covered products not listed in the IHS Report will reflect the price that Carpenter pays for the covered product plus Carpenter's administrative fees and delivery costs (if any). For such non-listed products, Carpenter will pass through any subsequent price increases or decreases during the TSA term to the Divestment Purchaser based upon documented price increases or decreases for the product that Carpenter receives.
  - Carpenter will provide the Divestment Purchaser with a price quote for a covered product once the Divestment Purchaser informs Carpenter of its intention to make purchases of that covered product.
- Payment: Net 30 days from the date of the invoice.
- Title: Title passes to the Divestment Purchaser upon payment in full by the Divestment Purchaser or on its behalf.
- Termination rights:
  - Material breach of contract that remains uncured after notice for 30 days.
  - Bankruptcy of the Divestment Purchaser.
- Governing law and jurisdiction: England & Wales law and courts (both exclusive).
- Firewall: Suitable firewall measures will be put in place within Carpenter to prevent access to competitively sensitive information (CSI) generated under the agreement. The Divestment Purchaser will also put in place similar arrangements.

- On the Carpenter side, the firewall will need to prevent flow of CSI from any individuals involved in relevant chemical purchases and supplies to the Divestment Purchaser to other individuals at Carpenter.
  - On the Divestment Purchaser side, the firewall will need to prevent the flow of CSI from any individuals involved in relevant chemical purchases from Carpenter to other individuals at the Divestment Purchaser.
- Other: Other standard terms in equivalent supply agreements will be provided.



### *Negotiations for Chemical Supply*

Carpenter and the Divestment Purchaser to enter into a TSA for negotiations for chemical supply under the following conditions:

- Parties: Provision of services by Carpenter to the Divestment Purchaser.
- Delivery: By telephone/VC.
- Services:
  - Training and assistance to one individual employed by the Divestment Purchaser in relation to methods and best practice for negotiations with chemical suppliers.
  - If requested, to conduct negotiations with chemical suppliers on behalf of the Divestment Purchaser for the supply of relevant chemical input products and additives to the Alfreton 1 Properties.
    - Relevant chemical input products and additives to be only those used by Recticel Limited in manufacturing polyether polyurethane foam at the Alfreton 1 facility in the six months prior to completion, but excluding any chemical input products or additives or any other products in relation to which negotiation and purchasing was carried out by Recticel Limited itself.
    - To include advice in relation to price and other terms and conditions but the final decision on all terms to be at the sole discretion of the Divestment Purchaser,
    - The Divestment Purchaser to enter into any agreement with a supplier (not Carpenter).
  - One Carpenter FTE to provide a minimum [CONFIDENTIAL] per month by telephone/VC during England & Wales working hours.
- Term: Up to [CONFIDENTIAL].
- Price: Reimbursement of any expenses incurred by Carpenter + an agreed negotiated rate for actual time spent.
- Payment: Net 30 days from the date of the invoice.
- Termination rights:
  - Material breach of contract that remains uncured after notice for 30 days.
  - Bankruptcy of the Divestment Purchaser.
- Governing law and jurisdiction: England & Wales law and courts (both exclusive).
- Firewall: Suitable firewall measures will be put in place within Carpenter to prevent access to competitively sensitive information (CSI) generated under the agreement. The firewall will need to prevent flow of CSI relating to the Divestment Purchaser's operations from the Carpenter individuals providing the consulting services to other individuals at Carpenter.
- Other: Other standard terms in equivalent agreements will be provided, including:
  - Quality of services provided.
  - No liability on Carpenter for any loss of any nature arising out of reliance on the training and assistance or negotiation services provided.

**ANNEX 6**

**[CONFIDENTIAL]**

**ANNEX 7**

**[CONFIDENTIAL]**