

## ANTICIPATED ACQUISITION BY CARPENTER CO. OF RECTICEL ENGINEERED FOAMS

### Final Undertakings given by Carpenter Co., Recticel NV/SA and Recticel Limited to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

Please note that [X] indicates figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

#### Background

- A. On 6 December 2021, Carpenter Co. (**Carpenter**) and entities within the Recticel NV/SA (**Recticel**) group entered into a conditional Agreement for Sale and Purchase under which Carpenter proposed to acquire the Recticel Engineered Foams business segment (**REF**) of Recticel (the '**Merger**').
- B. On 18 July 2022, the CMA, in accordance with section 33(1) of the Act, referred the Merger to a group of CMA panel members (the '**Reference**') to determine, pursuant to section 36 of the Act:
- (i) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (ii) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) in any market or markets in the United Kingdom (**UK**) for goods or services.
- C. On 16 November 2022, the CMA published a final report pursuant to section 38 of the Act (the '**Report**') which concluded that:
- (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (ii) the creation of that situation may be expected to result in a SLC in relation to: (i) the supply of comfort foam in the UK; (ii) the supply of technical foam in the UK; and (iii) the supply of converted comfort foam in the UK; and
  - (iii) the CMA should take action to remedy the SLC and any adverse effects resulting from it.

- D. The CMA, having regard to its findings in the Report, requires that Carpenter, or in the alternative, Recticel, divest the Divestment Business and put in place certain related arrangements to facilitate this divestiture (the '**Remedy**').
- E. The implementation of the Remedy will be subject to the following safeguards:
- (a) the Parties will be subject to regular reporting requirements;
  - (b) the Monitoring Trustee appointed in accordance with paragraph 8 will monitor compliance with these Final Undertakings, including the progress of the implementation of the Remedy;
  - (c) the purchaser must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 3; and
  - (d) these Final Undertakings include provisions enabling the CMA to direct the appointment of a Divestiture Trustee to effect the final disposal of Recticel Limited and the related arrangements in accordance with the conditions set out in paragraph 11.
- F. These undertakings are designed to allow flexibility as to the sequencing of the closing of the Merger and the Final Disposal, therefore certain obligations are imposed on the 'Selling Entity' – that is Carpenter or Recticel, as the case may be.
- G. Now therefore Carpenter, Recticel and Recticel Limited give to the CMA on behalf of themselves and, where relevant their Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects resulting from it.

## 1. **Interpretation**

- 1.1 The purpose of these Final Undertakings is to give effect to the Remedy identified in the Report and they shall be construed in accordance with the Report.
- 1.2 Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).
- 1.3 The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4 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 stated.
- 1.5 References to recitals, paragraphs, sub-paragraphs and annexes are references to the recitals, paragraphs and sub-paragraphs of, and annexes to, these Final Undertakings unless otherwise stated.
- 1.6 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether

corporate or incorporate. Any reference to person or position includes its or their successor in title.

- 1.7 The Annexes form part of these Final Undertakings.
- 1.8 The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.

- 1.9 Further, in these Final Undertakings:

<b>‘the Act’</b>	means the Enterprise Act 2002;
<b>‘Affiliate’</b>	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
<b>‘Approved Purchaser’</b>	means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 3;
<b>‘Approved Timetable’</b>	means the divestment timetable approved by the CMA in accordance with paragraph 3.2;
<b>‘Associated Person’</b>	means a person who is an associated person within the meaning of section 127 of the Act;
<b>‘business’</b>	has the meaning given by section 129(1) and (3) of the Act;
<b>‘CMA’</b>	means the Competition and Markets Authority;
<b>‘Carpenter’</b>	means Carpenter Co. a corporation incorporated and organised under the Laws of the Commonwealth of Virginia (United States of America) having its registered office at 5016 Monument Avenue, Richmond, Virginia 23230, United States of America and with Virginia State Corporation Commission Entity ID 00610907;
<b>‘Commencement Date’</b>	means [DATE] the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;
<b>‘Completion Date’</b>	means the date on which the Final Disposal is implemented;
<b>‘Confidential Information’</b>	means business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

<b>‘control’</b>	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act;
<b>‘Directions’</b>	means written directions given by the CMA as set out in paragraph 4.1;
<b>‘Divestment Business’</b>	means the business described in Annex 4, owned and/or operated by Recticel Limited prior to closing of the Merger;
<b>‘Divestiture Period’</b>	means the period beginning on the Commencement Date and ending [✂] after the Commencement Date, or such longer period as the CMA may approve in accordance with paragraph 16.1;
<b>‘Divestiture Trustee’</b>	means a person appointed in accordance with paragraph 11;
<b>‘Divestiture Undertakings’</b>	means those undertakings set out in paragraph 3;
<b>‘Final Disposal’</b>	means completion of the divestiture of the Divestment Business in accordance with the Final Undertakings to an Approved Purchaser;
<b>‘Final Undertakings’</b>	means these final undertakings given by Carpenter, Recticel and Recticel Limited and accepted by the CMA, including the Annexes hereto, and as may be varied in terms of paragraph 12;
<b>‘Key Staff’</b>	means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business, as specified in Annex 5;
<b>‘Merger’</b>	means the anticipated acquisition by Carpenter of REF;
<b>‘Monitoring Trustee’</b>	means a person appointed or retained in accordance with paragraph 8;
<b>‘ordinary course of business’</b>	means matters connected with the day-to-day supply of goods and services by Recticel Limited;
<b>‘Parties’</b>	means Carpenter, Recticel Limited and, to the extent that it is a Selling Entity (and for as long as it remains a Selling Entity)

	Recticel; each is referred to individually as a 'Party';
<b>'Purchaser Approval Criteria'</b>	means the criteria set out in Annex 3;
<b>'REF'</b>	means the Recticel Engineered Foams business of Recticel;
<b>'Recticel'</b>	means Recticel NV/SA, a limited liability company incorporated and organised under the Laws of Belgium, having its registered office at Bourgetlaan 42, 1130 Brussels, Belgium, registered with the Crossroads Bank for Enterprises under number 0405.666.668 (RLE Brussels, Dutch division);
<b>'Recticel Limited'</b>	means a company registered in England and Wales, with number 00665376 and a registered office at Bluebell Close, Clover Nook Industrial Park, Alfreton, Derbyshire, DE55 4RD, United Kingdom, which is a wholly-owned subsidiary of Recticel;
<b>'Related Person'</b>	means any Subsidiary, Affiliate or Associated Person;
<b>'Relevant Markets'</b>	means the (i) supply of comfort foam in the UK, (ii) supply of technical foam in the UK, and (iii) supply of converted comfort foam in the UK;
<b>'Remedy'</b>	means the requirements imposed by the CMA: (i) on the Selling Entity to divest the Divestment Business; and (ii) on Carpenter and Recticel to put in place certain related arrangements to facilitate the divestiture;
<b>'Report'</b>	means the Phase 2 Final Report entitled Anticipated acquisition by Carpenter Co. of the engineered foams business of Recticel NV/SA published by the CMA on 16 November 2022;
<b>'Selling Entity'</b>	means the entity which, immediately prior to the Final Disposal, will own the Divestment Business, that is (as the case may be depending on the sequencing of the closing of the Merger and the Final Disposal) Carpenter or Recticel; and until such time as that is established, it means both Carpenter and Recticel.

<b>‘SLC’</b>	means a substantial lessening of competition and adverse effects identified by the CMA in the Report;
<b>‘Specified Period’</b>	means the period beginning on the Commencement Date and terminating on the Completion Date;
<b>‘Subsidiary’</b>	unless otherwise expressly stated has the meaning given by section 1159 of the Companies Act 2006;
<b>‘Transaction Agreements’</b>	means the sale agreement and all other agreements to be concluded between Carpenter, Recticel and/or Affiliates and the Approved Purchaser which are necessary in order to effect the Final Disposal;
<b>‘Trustee Divestiture Period’</b>	means a period as the CMA may direct for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee;
<b>‘Trustee Obligation’</b>	means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly and, in any event, within the Trustee Divestiture Period;
<b>‘UK’</b>	means the United Kingdom of Great Britain and Northern Ireland;
<b>‘Working Day’</b>	means a day that is not a Saturday, a Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales; and
<b>‘written consent’</b>	means a consent given in writing, including by email.

## 2. **Commencement**

- 2.1 These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.
- 2.2 These Final Undertakings shall no longer apply if the Merger is terminated or otherwise abandoned.

## 3. **Divestiture Undertakings**

- 3.1 Each of the Parties gives the following undertakings:
  - (a) to give effect to and implement the Final Disposal within the Divestiture Period having due regard to the findings in the Report and procure that their respective Subsidiaries do all things necessary and within their

respective control to ensure the Parties are able to comply with these Final Undertakings;

- (b) to inform the CMA as soon as practicable, and in any event, within six weeks of the Commencement Date, of a shortlist of potential purchasers of the Divestment Business being drawn up for the CMA's formal approval against the Purchaser Approval Criteria. This obligation in paragraph 3.1(b) may be satisfied by Carpenter acting on behalf of all Parties;
  - (c) to provide the CMA with sufficient information regarding each potential purchaser for which the Parties seek formal approval from the CMA, having regard to the Purchaser Approval Criteria to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld. This obligation in paragraph 3.1(c) may be satisfied by Carpenter acting on behalf of all Parties
  - (d) to comply with any written directions given by the CMA under these Final Undertakings and to procure that their Subsidiaries also comply, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings, in particular the appointment of a Divestiture Trustee;
- 3.2 Each of the Parties undertakes that within three Working Days following the commencement of the Divestiture Period, or such other period as may be agreed by the CMA, to provide a timetable setting out the key milestones to ensure completion of the Final Disposal within the Divestiture Period. The CMA will as soon as reasonably practicable either approve this timetable as proposed or require reasonable amendments to it. The Parties shall notify the CMA as soon as reasonably practicable of any material changes or amendments to the timetable as approved by the CMA. This obligation in paragraph 3.2 may be satisfied by Carpenter acting on behalf of all Parties.
- 3.3 In the event that the Parties do not meet or are unlikely to meet a step as set out in the Approved Timetable or are otherwise delayed in implementing the Final Disposal, the Parties undertake to inform the CMA promptly in writing of the occurrence, the reasons for the failure and any remedial steps, but not later than three Working Days from becoming aware that a step in the Approved Timetable has not been or is unlikely to be met. This obligation in paragraph 3.3 may be satisfied by Carpenter acting on behalf of all Parties.
- 3.4 The CMA will advise the Parties whether any potential purchaser is an Approved Purchaser within a reasonable period from the time the CMA concludes it has received sufficient information about the potential purchaser. The CMA will promptly inform the Parties where it considers it has received insufficient information about the potential purchaser.
- 3.5 Wherever these Final Undertakings require the Parties to "transfer" an asset, they shall not be in breach of such obligation if, and to the extent that, prior to the Final Disposal, they have used best endeavours to secure: (i) a new contract, novation or assignment to the Approved Purchaser of the material contracts for third-party vendor services required by the Approved Purchaser and to the extent currently used by the Divestment Business; and (ii) the

consent of the counterparty to the material contracts for third-party vendor services required by the Approved Purchaser and currently used by the Divestment Business and to which Recticel Limited is the contracting party, to the change in control of the relevant entity (insofar as such consent is required). Where the Parties are unable to secure a novation or assignment, the Selling Entity undertakes to provide equivalent services at cost until the Approved Purchaser is able to enter into a contract for those services, provided that the Approved Purchaser at all times and at its cost uses reasonable endeavours to enter such contract as soon as practicable.

3.6 The Selling Entity undertakes to accept the following additional obligations:

- (a) to inform the CMA as soon as practicable, and in any event within two Working Days of the date when: (i) it has executed heads of terms with the Approved Purchaser (if applicable); (ii) the Transaction Agreements have been executed; and (iii) the Final Disposal has been completed.
- (b) to seek CMA approval of the final draft terms of the divestiture prior to the Final Disposal and provide all Transaction Agreements or other information the CMA may require.
- (c) to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or if it believes it is unlikely to, achieve the Final Disposal within the Divestiture Period.

These obligations in paragraph 3.6 may be satisfied by Carpenter acting on behalf of Recticel.

3.7 Carpenter and Recticel each undertakes:

- (i) [✂]
- (ii) to refrain from implementing the Merger unless and until the following conditions are satisfied:
  - (a) the CMA has notified Carpenter and Recticel of its approval (such approval not to be unreasonably withheld) of a purchaser as the Approved Purchaser; and
  - (b) the CMA has notified Carpenter and Recticel of its approval (such approval not to be unreasonably withheld) of the final drafts of the Transaction Agreements; and
  - (c) the approved sale agreement forming part of the Transaction Agreements has been executed by the parties thereto, and the other Transaction Agreements have been executed by (or are otherwise in agreed form between) the parties thereto.

3.8 This paragraph 3 shall no longer apply if the Merger is terminated or otherwise abandoned.

#### 4. **Additional Obligations**

4.1 Each of the Parties undertakes to comply and, where necessary, to procure that its Subsidiaries comply, with all Directions the CMA may issue relating to



these Final Undertakings and will promptly take such steps as may be specified or described in the Directions.

- 4.2 The Parties acknowledge that the CMA may choose not to issue Directions immediately upon becoming entitled to do so and recognise that any delay by the CMA in making a written Direction shall not affect the obligations of each of the Parties at such time as the CMA makes any written Direction.
- 4.3 Carpenter undertakes that for a period of ten years from the Final Disposal, it will not, and shall procure that any Related Person will not, bring under common ownership or control in whole or in part the Divestment Business without the prior written consent of the CMA.

## **5. Divestiture Reporting Obligations**

- 5.1 The Selling Entity undertakes to provide a written report to the CMA every two weeks from the commencement of the Divestiture Period, or such other interval as agreed with the CMA, until Final Disposal. With the consent of the CMA, the reports may be provided through the Monitoring Trustee. The report shall outline the progress the Selling Entity has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:

- (a) details of the efforts taken by the Selling Entity and its financial advisers to solicit purchasers for the Divestment Business.
- (b) the total number of persons who have lodged an indication of interest or similar document with (as applicable) Carpenter and Recticel for the acquisition of the Divestment Business since the publication of the Report;
- (c) the name, address, email address, contact point and telephone number of each person who has lodged an indication of interest or similar document with (as applicable) Carpenter and Recticel since the publication of the Report and (if applicable) subsequently been short-listed by the Selling Entity as a preferred purchaser;
- (d) the status of any discussions that have been held by the Selling Entity with potential purchasers of the Divestment Business;
- (e) the progress that has been made towards agreeing heads of terms (if applicable);
- (f) the steps that have been taken towards reaching transaction agreements and the persons to whom any draft agreements have been distributed; and
- (g) such other matters as may be directed by the CMA from time to time.

These reporting obligations in paragraph 5.1 may be satisfied by Carpenter acting on behalf of Recticel.

## **6. Asset Maintenance Undertakings**

- 6.1 Except with the prior written consent of the CMA, each of Carpenter, Recticel and Recticel Limited undertakes that during the Specified Period it will not take any action which might prejudice the Remedy or impair the ability of the Divestment Business and of the Approved Purchaser to compete effectively in the Relevant Markets.

## **7. Additional Obligations**

- 7.1 The Parties each undertake that until the Final Disposal, they will keep the CMA updated of any material developments (and, with the consent of the CMA, such updates may be provided through the Monitoring Trustee) relating to the Divestment Business, which include but are not limited to:

- (a) details of Key Staff (as defined in Annex 5) who leave or join the Divestment Business;
- (b) any interruption of the Divestment Business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 72 hours;
- (c) all substantial customer volumes won or lost for the Divestment Business including any substantial changes in customers' demand compared to the ordinary course of business in a respective comparable previous period in time;
- (d) substantial changes in the Divestment Business' contractual arrangements or relationships with key suppliers;
- (e) the initiation, defence, progress and resolution of any material litigation or regulatory enforcement action; and
- (f) the financial position and/or performance of the Divestment Business.

This paragraph 7.1 applies to a Party only to the extent that a matter is within that Party's knowledge and control. These reporting obligations in paragraph 7.1 may be satisfied by Carpenter acting on behalf of Recticel.

- 7.2 Each of Carpenter, Recticel and Recticel Limited undertakes that within a period of two weeks from the Commencement Date, it will provide written compliance statements to the CMA in the form set out in Annexes 6, 7 or 8 as appropriate, confirming compliance with its respective obligations under paragraphs 6 and 7 of these Final Undertakings (subject to any granted derogations). Each of them shall set out any details of material developments for the purposes of paragraphs 6 and 7 of which it is aware. Thereafter, each of them will provide similar compliance statements to the CMA (or, with the consent of the CMA, such statements may be provided through the Monitoring Trustee) every two weeks until the Completion Date.
- 7.3 If any of Carpenter, Recticel or Recticel Limited has any reason to suspect that paragraphs 6 or 7 might have been breached, it shall immediately notify the

CMA and the Monitoring Trustee appointed in accordance with the terms of paragraph 8.

- 7.4 The CMA may give Directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, paragraphs 6 or 7 or to do or refrain from doing any specified action in order to ensure compliance with paragraphs 6 or 7. The CMA may vary or revoke any Directions so given.
- 7.5 Each of Carpenter, Recticel and Recticel Limited shall comply and procure compliance by their Subsidiaries where necessary in so far as they are able with such Directions as the CMA may from time to time give to take such steps as may be specified or described in the Directions for the purpose of carrying out or securing compliance with paragraphs 6 or 7.

## **8. Monitoring Trustee**

- 8.1 Carpenter undertakes to promptly secure the appointment or retention of an independent Monitoring Trustee to perform the functions set out in Annex 1 on behalf of the CMA.
- 8.2 The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
- 8.3 The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
- 8.4 Carpenter shall remunerate and reimburse the Monitoring Trustee for all reasonable costs and professional fees properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
- 8.5 The following apply:
- (a) the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. Carpenter shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA (such approval not to be unreasonably withheld or delayed) and appointed by Carpenter, Carpenter shall provide the CMA with a copy of the agreed terms and conditions of appointment.
  - (b) If the proposed Monitoring Trustee is rejected by the CMA, Carpenter shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in

accordance with the requirements and the procedures set out in paragraphs 8.2 to 8.4 above.

8.6 The provisions of paragraph 8.7 below shall apply if:

- (a) Carpenter fails to nominate persons in accordance with paragraphs 8.1 or 8.5 above; or
- (b) those further persons nominated by Carpenter in accordance with paragraph 8.5 above are rejected by the CMA; or
- (c) Carpenter is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.

8.7 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Carpenter shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.

8.8 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in paragraph 10 below and that the Monitoring Trustee will monitor the compliance of Carpenter, Recticel and Recticel Limited with their obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

8.9 Each of Carpenter, Recticel and Recticel Limited shall so far as within their respective control promptly provide all information and data reasonably requested by the Monitoring Trustee for the purposes of its functions as set out in paragraph 10 and shall cooperate in good faith with the Monitoring Trustee in this regard.

## **9. Monitoring Trustee – replacement, discharge and reappointment**

9.1 Carpenter acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Carpenter to replace the Monitoring Trustee.

9.2 If the Monitoring Trustee is removed under paragraph 9.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 8 above.

## **10. Monitoring Trustee Functions – Divestiture of the Divestment Business**

10.1 The Monitoring Trustee's functions as set out in this paragraph 10 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:

- (a) Monitoring on-going compliance with paragraph 3 above and paragraph 6 above; and

- (b) monitoring the progress made against the Approved Timetable towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
    - (i) the steps that have been taken towards the preparation of agreements for the transfer of the Divestment Business and the persons to whom such agreements have been distributed;
    - (ii) where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between, on the one hand, Carpenter, Recticel, Recticel Limited and their financial or other advisers and, on the other hand, possible purchasers or their financial or other advisers in connection with the disposal process; and
    - (iii) in instances where the Monitoring Trustee reasonably considers there to be a material risk that the Parties or any of their Subsidiaries will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between the Parties and possible purchasers in connection with the disposal process.
- 10.2 The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks, the first report to be submitted no later than three weeks from the Commencement Date.
- 11. Divestiture Trustee**
- 11.1 Carpenter, Recticel and Recticel Limited recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee following the expiration of the Divestiture Period if the Selling Entity fails to achieve the Final Disposal within the Divestiture Period, or prior to the expiry of the Divestiture Period including where:
- (a) the CMA reasonably believes that there is a risk that the Final Disposal would be delayed or fail to be completed within the Divestiture Period; or
  - (b) the CMA reasonably believes after raising its concerns with Carpenter, Recticel and Recticel Limited that they are not engaging constructively with each of their respective obligations under these Final Undertakings or that any of them has otherwise failed to comply with each of its respective obligations under these Final Undertakings; or
  - (c) the CMA reasonably believes there is a material deterioration in the Divestment Business during the divestiture process.
- 11.2 To give effect to this paragraph 11, Carpenter undertakes to enter into a Divestiture Trustee Mandate with the Divestiture Trustee in accordance with Annex 2, if directed to do so by the CMA pursuant to paragraph 11.1.
- 11.3 Carpenter, Recticel and Recticel Limited shall so far as within their respective control promptly provide all information and data reasonably requested by the

Divestiture Trustee for the purposes of its functions and shall cooperate in good faith with the Divestiture Trustee in this regard.

## **12. Variations to these Final Undertakings**

- 12.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 12.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA 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 and to its statutory duties.
- 12.3 The consent of the CMA shall not be unreasonably withheld or delayed.

## **13. General obligations to provide information to the CMA**

- 13.1 Carpenter, Recticel and Recticel Limited each undertakes to cooperate with the CMA in good faith and to promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.
- 13.2 Carpenter, Recticel and Recticel Limited each undertakes that should it at any time be in breach of any provision of these Final Undertakings, it will notify the CMA within three Working Days, starting with the date it becomes aware of the breach or relevant circumstances of that breach.
- 13.3 Where any person, including a Monitoring Trustee or a Divestiture Trustee must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Carpenter, Recticel and Recticel Limited each undertakes that it will take reasonable steps within its respective power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Carpenter, Recticel and Recticel Limited to any person other than to the CMA, without the prior written consent of both the CMA and the relevant owner(s) (Carpenter, Recticel and Recticel Limited) of the information in question.

## **14. Acceptance of service**

- 14.1 Carpenter hereby authorises its legal representatives, McGuireWoods London LLP c/o Matthew Hall, whose address for service is 5 New Street Square, London EC4A 3BF to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Carpenter or its Subsidiaries or Affiliates in connection with proceedings in court in the UK). This provision shall also apply to Recticel Limited during any period in which it is a Subsidiary of Carpenter.
- 14.2 Recticel and Recticel Limited hereby authorise their legal representatives, Allen & Overy LLP c/o Thomas Masterman, whose address for service is One Bishops Square, London E1 6AD to accept service of all documents, orders, requests, notifications or other communications connected with these Final

Undertakings (including any such document which falls to be served on or sent to Recticel or its Subsidiaries or Affiliates in connection with proceedings in court in the UK). This provision shall only apply to Recticel Limited while it is a Subsidiary of Recticel.

- 14.3 Unless any of Carpenter, Recticel or Recticel Limited informs the CMA that its legal representatives have ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, written directions, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served, as applicable, on Carpenter, Recticel or Recticel Limited, if it is served on its applicable respective legal representatives, and service or receipt shall be deemed to be acknowledged by email from Carpenter's, Recticel's and Recticel Limited's legal representatives to the CMA.
- 14.4 This paragraph has effect irrespective of whether, as between each of Carpenter, Recticel, Recticel Limited and its respective legal representatives, the legal representatives in question have or continue to have any authority to accept and acknowledge service on behalf of their client (unless Carpenter, Recticel, or Recticel Limited informs the CMA that its legal representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Carpenter's, Recticel's or Recticel Limited's legal representatives (including a failure to notify, as applicable, its client, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

**15. Effect of invalidity**

- 15.1 Carpenter, Recticel and Recticel Limited each undertakes that should any provision of these Final Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

**16. Extension of time**

- 16.1 Carpenter, Recticel and Recticel Limited recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from any of them showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which any of them, the Monitoring Trustee and the Divestiture Trustee (as the case may be) must take action. The grant of any such extension shall not be unreasonably withheld or delayed.

**17. Undertakings given jointly and severally**

- 17.1 Where undertakings in these Final Undertakings are expressed as being given by more than one of Carpenter, Recticel and Recticel Limited, they are given (a) jointly and severally by Recticel and Recticel Limited for so long as Recticel Limited is a Subsidiary of Recticel and (b) jointly and severally by Carpenter and Recticel Limited in respect of any period in which Recticel Limited is a Subsidiary of Carpenter.

18. **Governing law**

- 18.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.
- 18.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.



FOR AND ON BEHALF OF CARPENTER CO.

.....

Signed

.....

Name

.....

Title

.....

Date

FOR AND ON BEHALF OF RECTICEL NV/SA

.....

Signed

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Name

.....

Title

.....

Date

FOR AND ON BEHALF OF RECTICEL LIMITED

.....  
Signed

.....  
Name

.....  
Title

.....  
Date

## **Annex 1: Appointment and Functions of Monitoring Trustee**

1. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
2. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
3. Carpenter shall remunerate and reimburse the Monitoring Trustee for all reasonable costs and professional fees properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
4. The following apply:
  - a. the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. Carpenter shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by Carpenter, Carpenter shall provide the CMA with a copy of the agreed terms and conditions of appointment.
  - b. If the proposed Monitoring Trustee is rejected by the CMA, Carpenter shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in clauses 1 to 3 of Annex 1.
5. The provisions of clause 6 of Annex 1 below shall apply if:
  - a. Carpenter fails to nominate persons in accordance with clauses 1 or 4 of Annex 1; or
  - b. those further persons nominated by Carpenter in accordance with clause 4 of Annex 1 above are rejected by the CMA; or
  - c. Carpenter is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as Monitoring Trustee, and Carpenter shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
7. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in clause 10 of Annex 1 and that the Monitoring Trustee will monitor the compliance of Carpenter, Recticel and Recticel Limited

with their obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

### **Monitoring Trustee – replacement, discharge and reappointment**

8. Carpenter acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Carpenter to replace the Monitoring Trustee.
9. If the Monitoring Trustee is removed under clause 8 of Annex 1, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 7 of Annex 1.

### **Monitoring Trustee Functions – Divestiture of the Divestment Business**

10. The Monitoring Trustee's functions as set out in this clause 10 of Annex 1 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:
  - a. Monitoring on-going compliance with the Divestiture Undertakings set out in paragraph 3 of the Final Undertakings and the Asset Maintenance Undertakings set out in paragraph 6 of the Final Undertakings; and
  - b. monitoring the progress made against the Approved Timetable towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
    - i. the steps that have been taken towards the preparation of agreements for the transfer of the Divestment Business and the persons to whom such agreements have been distributed;
    - ii. where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between, on the one hand, Carpenter, Recticel, Recticel Limited and their financial or other advisers and, on the other hand, possible purchasers or their financial or other advisers in connection with the disposal process; and
    - iii. in instances where the Monitoring Trustee reasonably considers there to be a material risk that the Parties or any of their Subsidiaries will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between the Parties and possible purchasers in connection with the disposal process.
11. The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a

written report to the CMA every four weeks, the first report to be submitted no later than three weeks from the Commencement Date.

## **Annex 2: Appointment and Functions of Divestiture Trustee**

1. Carpenter undertakes that within the period of five Working Days following the day on which the CMA issues a direction pursuant to paragraph 11 of the Final Undertakings, Carpenter shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in clause 2 below and shall include among other things:
  - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to perform its duties; and
  - b. a schedule of the steps to be taken to give effect to the mandate.
2. Each person on the list referred to in clause 1 of Annex 2 shall possess the qualifications necessary for the performance of the mandate, shall be independent of and unconnected to Carpenter, Recticel and Recticel Limited and free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration, on appointment or thereafter.
3. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, Carpenter shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Carpenter shall be free to choose among the approved names the Divestiture Trustee to be appointed. Carpenter undertakes to appoint the Divestiture Trustee within three Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
4. If all the proposed Divestiture Trustees are rejected by the CMA, Carpenter shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in clauses 1 to 3 of Annex 2 above.
5. The provisions of clause 6 of Annex 2 below shall apply only if:
  - (a) Carpenter fails to nominate persons in accordance with clause 1 or clause 4 of Annex 2;
  - (b) those further persons nominated by Carpenter in accordance with clause 4 of Annex 2 are rejected by the CMA; or
  - (c) Carpenter is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Carpenter shall appoint or cause to be appointed such Divestiture Trustee within five Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

## **Divestiture Trustee – Functions**

7. Carpenter, Recticel and Recticel Limited each undertakes to enable the Divestiture Trustee to carry out its duties and to provide such co-operation and resources as the Divestiture Trustee may reasonably require.
8. Carpenter, Recticel and Recticel Limited recognise and acknowledge that:
  - a. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;
  - b. in order to implement the Trustee Obligation, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee to amend the scope of the Divestment Undertakings, where the CMA has reasonable grounds for believing that the divestiture of the Divestment Business cannot be achieved within the Divestiture Period;
  - c. the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary to implement the Trustee Obligation and such terms and conditions as the CMA considers appropriate; and
  - d. the Divestiture Trustee shall protect the legitimate financial interests of Recticel and Carpenter subject to the Divestiture Trustee's overriding obligation to implement the Trustee Obligation which may include the Final Disposal of the Divestment Business at no minimum price.
9. Carpenter, Recticel and Recticel Limited recognise and acknowledge that the Divestiture Trustee shall take such steps and measures as it considers necessary to implement the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to Carpenter, Recticel and Recticel Limited. Carpenter, Recticel and Recticel Limited each undertakes to comply with such directions or to procure compliance with such directions as are within its respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.
10. Carpenter, Recticel and Recticel Limited recognise and acknowledge that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Carpenter, Recticel or Recticel Limited. Carpenter undertakes that it shall not seek to revise the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.
11. The Divestiture Trustee shall every two weeks until the date on which Final Disposal takes place, report to the CMA on its progress towards Final Disposal, compliance with paragraph 6 of the Final Undertakings and any other matter specified by the CMA.
12. The Trustee Obligation shall no longer apply if the Merger is terminated or otherwise abandoned.

## **Divestiture Trustee – duties and obligations of Carpenter, Recticel and Recticel Limited**

13. Carpenter, Recticel and Recticel Limited each undertakes to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request that is relevant to the divestiture, excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the performance of the Trustee Obligation.
14. Carpenter, Recticel and Recticel Limited recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege). Carpenter, Recticel and Recticel Limited each undertakes to provide the Divestiture Trustee upon reasonable request with copies of any such items. Upon the reasonable request of the Divestiture Trustee, Carpenter, Recticel and Recticel Limited each undertakes to make available to the Divestiture Trustee one or more offices on its respective premises and ensure that its necessary personnel and/or the personnel of the Divestment Business are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary to discharge the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with the Parties' respective internal policies.
15. Carpenter, Recticel and Recticel Limited each undertakes to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. Carpenter, Recticel and Recticel Limited each undertakes that upon the reasonable request of the Divestiture Trustee, it shall execute the documents required to give effect to the Trustee Obligation.
16. Carpenter, Recticel and Recticel Limited each undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest the Divestment Business and Carpenter, Recticel and Recticel Limited recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to any of them or any of their Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest the Divestment Business, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers. This clause 16 of Annex 2 shall only apply to each of Carpenter, Recticel and Recticel Limited in so far as a matter is within that party's control.
17. Carpenter shall be entitled to a monthly statement from the Divestiture Trustee of all professional fees and expenses properly incurred by the Divestiture



Trustee and its advisers, appointed in accordance with clauses 1 to 6 of Annex 2. Any individual items of costs or expenses in excess of an amount at a level set in advance by the CMA in consultation with the Divestiture Trustee shall not be properly incurred unless with the prior written consent of the CMA, Carpenter having had prior opportunity to comment to the CMA on both the level to be set in advance and any individual items of cost or expense that exceed that amount, on the condition that Carpenter shall provide such comments to the CMA within a timescale specified by the CMA that shall be reasonable in all the circumstances.

18. Carpenter shall remunerate and reimburse the Divestiture Trustee for all professional fees, expenses and reasonable costs properly incurred in accordance with the terms and conditions of its appointment. This may include all costs, expenses and professional fees of financial or legal advisers appointed to assist with the fulfilment of the Trustee Obligation if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Carpenter. Should Carpenter refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Carpenter, approve and direct the appointment of such advisers.
19. Carpenter and Recticel each undertakes to make no objection to the Final Disposal save on the grounds of bad faith, wilful default, recklessness or negligence by the Divestiture Trustee or subject to clause 8.d of Annex 2, failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of Recticel and/or Carpenter.

#### **Divestiture Trustee – replacement, discharge and reappointment**

20. Carpenter, Recticel and Recticel Limited acknowledge that if the Divestiture Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Carpenter to replace the Divestiture Trustee.
21. If the Divestiture Trustee is removed under clause 20 of Annex 2 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee will have effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 6 of Annex 2.
22. Carpenter, Recticel and Recticel Limited recognise and acknowledge that, other than in accordance with clause 20 of Annex 2, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

## **Annex 3: Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Report in the Relevant Markets.

The CMA shall on reasonable request give Carpenter and/or Recticel guidance on the interpretation of specific aspects of these Purchaser Approval Criteria, so as to enable the Selling Entity to ensure that its selected purchaser for the Divestment Business will meet the requirements of this Annex 3.

### **1. Independence**

- 1.1 An Approved Purchaser should not have any connection (for example financial, management, shared directorships, equity interests, reciprocal commercial arrangements) to Carpenter that could reasonably be expected to compromise the Approved Purchaser's ability or incentives to compete with Carpenter after the Final Disposal.

### **2. Capability**

- 2.1 An Approved Purchaser should have access to or be able to secure appropriate financial resources, expertise and assets to enable the Divestment Business to be an effective competitor in the Relevant Markets. This access should be sufficient to enable the Divestment Business to continue to develop as an effective competitor in the Relevant Markets.
- 2.2 An Approved Purchaser should demonstrate that it has:
  - (a) sufficient R&D capabilities; and
  - (b) experience in chemicals purchasing.

### **3. Commitment to the Relevant Markets**

- 3.1 An Approved Purchaser should demonstrate to the satisfaction of the CMA that it is committed to and has credible plans for competing in the Relevant Markets. This should be evidenced by:
  - (a) a business plan demonstrating how the purchaser will maintain and operate the Divestment Business as a viable business actively competing in the market for (i) the supply of comfort foam in the UK, (ii) the supply of technical foam in the UK, and (iii) supply of converted comfort foam in the UK; and
  - (b) managerial, operational and technical capability to support such a business plan.

### **4. Absence of competitive concern**

- 4.1 An Approved Purchaser should not give rise to a realistic prospect of an SLC in the Relevant Markets.

## Annex 4: Matters included within the Divestment Business

### A. 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/or operated by Recticel Limited at Alfreton 1 (Derbyshire, United Kingdom) and the flexible polyether PU comfort foam converting facility, assets and business which is currently owned and/or operated by Recticel Limited at Alfreton 2 (Derbyshire, United Kingdom). Alfreton 1 and Alfreton 2 consist of tangible and intangible assets which either: 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 4 below.
2. The divestment will be implemented through the sale or licence or assignment of:
  - a. Recticel Limited, which will transfer to the Approved Purchaser in the form of a share sale with the Selling Entity.
    - i. The agreement with the Approved Purchaser for the sale of Recticel Limited will include an obligation on Carpenter and its Affiliates for three months after the Completion Date 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 Recticel Limited. This obligation shall not apply in relation to any of the customers which are at the Completion Date existing customers of Carpenter or its Affiliates or have purchased from Carpenter or its Affiliates in the three-year period prior to the Completion Date. 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 4.
3. In accordance with paragraph 1 of Annex 4, 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 the Completion Date, 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 Completion Date.
4. In accordance with paragraph 1 of Annex 4, 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, the Selling Entity will use reasonable endeavours to obtain the consent of the relevant contracting parties to ensure the Approved Purchaser receives the benefit of all rights and obligations under those contracts. Where such approvals cannot be obtained within a period agreed to between the Selling Entity and the Approved Purchaser, the Selling Entity will cooperate with the Approved Purchaser to establish an alternative arrangement;
  - b. All receivables owed to the Divestment Business or the Selling Entity in relation to the Divestment Business as of the Completion Date;
  - 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 and Recticel 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 the Completion Date;
- h. Without any limitation on the Approved Purchaser to make offers of employment in the Divestment Business to individuals as it sees fit, the Selling Entity shall co-operate with the Approved Purchaser in good faith to enable the Approved Purchaser to identify and to offer employment in the Divestment Business, upon the Completion Date, to any individuals not transferred with Recticel Limited or by operation of law and who are employed at the time of Final Disposal 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. If these individuals do not accept the Approved Purchaser's offer, or if an offer is not made, Carpenter will use its best efforts to make such services available to the Approved Purchaser, on an exclusive basis, for a period of up to one (1) year after the Completion Date, at the option of the Approved 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 and/or Recticel agree 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 [X];
  - The benefit of a trade-mark licence [X].
- 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 4 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>1</sup>
- l. Data and information relating to R&D projects conducted by REF that are not closed and which involve polyether comfort foam (upstream/unconverted and converted) and polyether foam for sponge applications (upstream/unconverted; not converted). Where the project is planned to benefit REF's UK operations only, the intangible assets will include a full transfer of rights with the Selling Entity retaining no rights. Where the project is planned to benefit both REF's UK operations and REF's non-UK operations, the intangible assets will include a perpetual, irrevocable royalty-free licence to the Approved Purchaser for UK applications only. Carpenter will retain rights for the UK and 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. Data and information arising out of completed R&D projects which is used by the Divestment Business is included within the intellectual property rights included with the Divestment Business. Where an R&D project is not planned to

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<sup>1</sup> As necessary, the Selling Entity will use reasonable endeavours to assist the Approved 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 Approved 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.

benefit REF's UK operations, there will be no licence or transfer to the Approved Purchaser;

- m. If there are any assets, property, claims, or interest which are not covered by this Annex 4 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 Approved Purchaser as part of the Divestment Business, at no additional cost.
- 5. Carpenter and/or Recticel shall, at the option of the of the Approved Purchaser, enter into transitional services agreements with the Approved Purchaser (including Recticel Limited for the purpose of this paragraph 5 of Annex 4) pursuant to which Carpenter and/or Recticel will provide back-office services, including information technology, human resources, and/or finance/accounting/tax/corporate services replicating services to be provided by Recticel to Carpenter as they relate to Recticel Limited so far as necessary to ensure the viability and competitiveness of the Divestment Business. These transitional services agreements will have a maximum duration of [✂] from the Completion Date.
  - 6. As required by Recticel and/or Carpenter, the Approved Purchaser (or, for the purpose of this paragraph 6 of Annex 4, Recticel Limited) may enter into reverse transitional services agreements with Carpenter and/or Recticel pursuant to which the Approved Purchaser shall provide Recticel Insulation UK Limited and/or Recticel Engineered Foams Corby Limited with necessary transitional back-office services relating to human resources, VAT and/or UK finance matters for up to [✂] from the Completion Date.

## **Annex 5: Divestment Business Key Staff**

Key Staff will mean any individuals performing the following roles in relation to the Divestment Business (or any role that is operationally equivalent to these roles):

- [✂]
- [✂]
- [✂]
- [✂]
- [✂]
- [✂]
- [✂]
- [✂]



## **Annex 6: Compliance Statement for Carpenter Co.**

I [insert name] confirm on behalf of Carpenter Co. (Carpenter) that:

### *Compliance in the Specified Period*

1. In the Specified Period:
  - (a) Carpenter and its subsidiaries have complied with the Final Undertakings accepted by the CMA on [insert date of Final Undertakings] that are applicable to them in relation to the Merger.
2. Except with the prior written consent of the CMA :
  - (a) No action has been taken by Carpenter that might impair the ability of the Divestment Business and of the Approved Purchaser to compete effectively in the Relevant Markets.
  - (b) Except as previously described to the CMA under paragraph 7.1 of the Final Undertakings, and so far as Carpenter is aware, there have been no:
    - (i) Changes to the Key Staff of the Divestment Business;
    - (ii) Interruptions to the Divestment Business (including without limitation, procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 72 hours;
    - (iii) Substantial customer volumes won or lost including substantial changes in customers' demand compared to the ordinary course of business in a respective comparable previous period in time;
    - (iv) Substantial changes in the Divestment Business' contractual arrangements or relationships with key suppliers.
3. Carpenter and its subsidiaries remain in full compliance with the Final Undertakings so far as applicable to them and will continue actively to keep the CMA informed of any material developments relating to the Divestment Business in accordance with paragraph 7.1 of the Final Undertakings.

### Interpretation

4. Terms defined in paragraph 1.9 of the Final Undertakings have the same meaning in this compliance statement.

I understand that:

5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both. (Section 117 of the Enterprise Act 2002.)

FOR AND ON BEHALF OF CARPENTER CO.

Signature .....

Name .....

Title .....

Date .....

## **Annex 7: Compliance Statement for Recticel NV/SA**

I [insert name] confirm on behalf of Recticel that:

### *Compliance in the Specified Period*

1. In the Specified Period:
  - (a) Recticel and its subsidiaries have complied with the Final Undertakings accepted by the CMA on [insert date of Final Undertakings] that are applicable to them in relation to the Merger.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Recticel that might impair the ability of the Divestment Business and of the Approved Purchaser to compete effectively in the Relevant Markets.
  - (b) Except as previously described to the CMA under paragraph 7.1 of the Final Undertakings, and so far as Recticel is aware, there have been no:
    - (i) Changes to the Key Staff of the Divestment Business;
    - (ii) Interruptions to the Divestment Business (including without limitation, procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 72 hours;
    - (iii) Substantial customer volumes won or lost including substantial changes in customers' demand compared to the ordinary course of business in a respective comparable previous period in time;
    - (iv) Substantial changes in the Divestment Business contractual arrangements or relationships with key suppliers.
3. Recticel and its subsidiaries remain in full compliance with the Final Undertakings so far as applicable to them and will continue actively to keep the CMA informed of any material developments relating to the Divestment Business in accordance with paragraph 7.1 of the Final Undertakings.

### *Interpretation*

4. Terms defined in paragraph 1.9 of the Final Undertakings have the same meaning in this compliance statement.

I understand that:

6. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both. (Section 117 of the Enterprise Act 2002.)

FOR AND ON BEHALF OF RECTICEL NV/SA.

Signature .....

Name .....

Title .....

Date .....

## **Annex 8: Compliance Statement for Recticel Limited**

I [insert name] confirm on behalf of Recticel Limited that:

### *Compliance in the Specified Period*

1. In the Specified Period:
  - (a) Recticel Limited and its subsidiaries have complied with the Final Undertakings accepted by the CMA on [insert date of Final Undertakings] that are applicable to them in relation to the Merger.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Recticel Limited that might impair the ability of the Divestment Business and of the Approved Purchaser to compete effectively in the Relevant Markets.
  - (b) Except as previously described to the CMA under paragraph 7.1 of the Final Undertakings, and so far as Recticel Limited is aware, there have been no:
    - (i) Changes to the Key Staff of the Divestment Business;
    - (ii) Interruptions to the Divestment Business (including without limitation, procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 72 hours;
    - (iii) Substantial customer volumes won or lost including substantial changes in customers' demand compared to the ordinary course of business in a respective comparable previous period in time;
    - (iv) Substantial changes in the Divestment Business contractual arrangements or relationships with key suppliers.
3. Recticel Limited and its subsidiaries remain in full compliance with the Final Undertakings so far as applicable to them and will continue actively to keep the CMA informed of any material developments relating to the Divestment Business in accordance with paragraph 7.1 of the Final Undertakings.

### *Interpretation*

4. Terms defined in paragraph 1.9 of the Final Undertakings have the same meaning in this compliance statement.

I understand that:

7. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both. (Section 117 of the Enterprise Act 2002.)

FOR AND ON BEHALF OF RECTICEL LIMITED.

Signature .....

Name .....

Title .....

Date .....