

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Sika AG and Sika Australia Pty Ltd (ACN 001 342 329)

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Sika AG and its subsidiary Sika Australia Pty Ltd ACN 001 342 329 (together referred to as **Sika** in this Undertaking).

2. Background

The parties to the proposed acquisition

- 2.1. **Acquirer:** Sika AG (indirectly via its wholly-owned subsidiary Sika International AG) a listed company headquartered in Switzerland. Sika develops and produces in particular chemical admixtures, mortars, sealants and adhesives, damping and reinforcing materials, structural strengthening systems, industrial flooring as well as roofing and waterproofing systems which are used in the building sector and by manufacturing industries. Sika SA manufactures and distributes products in Australia through its subsidiary, Sika Australia Pty Ltd.
- 2.2. **Target:** LSF11 Skyscraper HoldCo S.à r.l., the holding company for the MBCC Group of entities, and established in Luxembourg. MBCC Group produces and distributes chemical admixtures and construction systems for new constructions, maintenance, repair and renovation of residential and commercial buildings, as well as infrastructure. It is specialised in the manufacture of concrete repair and protection systems, performance grouts, waterproofing systems, sealants, performance flooring systems, as well as wood and fire protection products and manufactures chemical admixtures. MBCC Group manufactures and distributes products in Australia through its subsidiary MB Solutions Australia Pty Ltd and Bluey Technologies Pty Ltd.

The Proposed Acquisition

- 2.3. Sika AG, indirectly via its wholly-owned subsidiary Sika International AG, is proposing to acquire 100% of the shares in LSF11 Skyscraper HoldCo S.à r.l., Luxembourg, the holding company of the MBCC group of companies from Lone Star Funds (**Proposed Acquisition**).

The ACCC's review

- 2.4. On 20 January 2022, the ACCC commenced its public review of the Proposed Acquisition.
- 2.5. The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.6. The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of chemical admixtures in Australia.
- 2.7. The ACCC considered that the Proposed Acquisition would combine the two largest suppliers of chemical admixtures in Australia and remove Sika's closest competitive constraint. Post-acquisition, their combined market share would be

approximately 80 per cent. The ACCC considered that other suppliers would not represent a sufficient level of competitive constraint to prevent the merged entity from profitably increasing prices or decreasing service quality. For larger customers in particular, Sika and MBCC are the only two suppliers currently able to service their needs.

- 2.8. The threat of new entry or expansion was considered unlikely to provide an effective constraint on the merged entity. The ACCC found that the market for the supply of chemical admixtures has high barriers to entry and expansion. Such barriers include difficulties accessing raw materials, incumbency advantages for existing suppliers, and significant economies of scale and scope. The ACCC concluded that customers would be unlikely to effectively bypass the merged entity.
- 2.9. Concerns were also raised about whether other suppliers would have the ability to conduct research, develop and innovate on a sufficient scale and scope to compete effectively with the merged entity. If other suppliers did not have the ability to compete in this way, the ACCC was concerned that the merged entity would be less incentivised to innovate and, for example, bring new product developments to Australia.

Commitments to the European Commission

- 2.10. On 14 December 2022, Sika notified the European Commission of the Proposed Acquisition.
- 2.11. On 18 January 2023, Sika submitted the proposed EC Commitments to the European Commission, setting out the terms upon which Sika will divest the Divestiture Business.
- 2.12. On 8 February 2023, the European Commission approved, under the EU Merger Regulation, the Proposed Acquisition. The approval is conditional on the divestiture of the Divestiture Business.

The Undertaking remedy

- 2.13. Sika does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. However, to address the ACCC's competition concerns, Sika has offered this Undertaking pursuant to section 87B of the Act.
- 2.14. This Undertaking incorporates the EC Commitments to divest or procure the divestiture of the Divestiture Business to a Purchaser. Pursuant to the EC Commitments, the purchaser must be approved by the European Commission. Pursuant to this Undertaking, the purchaser must be approved by the ACCC.
- 2.15. The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on Sika to:
 - (a) ensure that the Divestiture Business is sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor for the supply of chemical admixtures in Australia;

- (b) ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with Sika in the supply of chemical admixtures in Australia;
- (c) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture;
- (d) ensure that research and development facilities will transfer to the Approved Purchaser of the Divestiture Business; and
- (e) provide for the effective oversight of Sika's compliance with this Undertaking.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by Sika; and
- (b) this Undertaking so executed is accepted by the ACCC

(the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

4.1. Sika may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

4.3. The ACCC may, at any time, waive any of the obligations contained in this Undertaking. Such a waiver must be express and in writing.

Extension

4.4. The ACCC may, at any time, extend the date by which any of the obligations contained in the Undertaking is to be satisfied. Such an extension must be express and in writing.

Survival

4.5. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15, 16, 17 and 18 survive completion of the obligations in clauses 5, 6, 7, 8, 10 and Schedule 4 and Confidential Schedule 5, Confidential Schedule 6 and Confidential Schedule 7, Confidential Schedule 8, Confidential Schedule 9 and Confidential Schedule 10.

5. Divestiture of the Divestiture Business

Divestiture

- 5.1. Sika must, in accordance with this Undertaking:
- (a) divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser; and
 - (b) on and from the Control Date, comply with the EC Commitments as they relate to divestiture of the Divestiture Business.
- 5.2. For the avoidance of doubt, the EC Commitments will be interpreted in accordance with the applicable laws of interpretation in the EEA.
- 5.3. In the event that clause 10 applies, Sika must not authorise the Approved Divestiture Trustee to divest the Unsold Business to a purchaser other than an Approved Purchaser.
- 5.4. Sika must divest, or cause the divestiture of, the Divestiture Business by:
- (a) the sale, assignment, transfer and/or licence of the Divestiture Business, including all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Divestiture Period, otherwise clause 10 applies;
 - (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.5 to 5.6;
 - (c) the transfer of any Transferred Personnel required pursuant to clauses 5.8 to 5.9;
 - (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.10 to 5.12; and
 - (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.13 to 5.15.

Consents

- 5.5. Sika must:
- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Australian Divestiture Business;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and

- (e) enter an agreement with the Approved Purchaser and approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Australian Divestiture Business which may be affected by any failure to gain a Consent.
- 5.6. If, seven Business Days before completion of the divestiture of the Australian Divestiture Business, the Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then Sika must:
- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
 - (b) continue to do everything in its power to satisfy clause 5.5 as soon as possible after the completion of the divestiture of the Australian Divestiture Business (and until such time as clause 5.5 is satisfied).
- 5.7. Even if Sika has complied with clause 5.5 to 5.6, Sika will be in breach of this Undertaking if Sika is unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.8. At the option of the Approved Purchaser, Sika must transfer to the Approved Purchaser:
- (a) all employees; and
 - (b) all service providers under a contract for service;
- who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Australian Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).
- 5.9. When fulfilling its obligations under clause 5.8, Sika must:
- (a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;
 - (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Divestiture Business;
 - (c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to Sika;
 - (d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and

- (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Sika for a period of 12 months after the completion of the divestiture of the Divestiture Business.

Technical Assistance

- 5.10. At the option of the Approved Purchaser, Sika must supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Australian Divestiture Business.
- 5.11. Sika must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:
 - (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
 - (b) at cost price and otherwise on arm's length terms.
- 5.12. To avoid doubt, Sika must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.10 and 5.11.

Transitional Supply Agreements

- 5.13. At the option of the Approved Purchaser, Sika must ensure the continued supply by Sika to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in the supply of chemical admixtures in Australia.
- 5.14. Sika must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
 - (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply or re-supply of the included goods and services at cost (i.e. applying current MBCC Group intracompany pricing policies); and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.15. To avoid doubt, Sika must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the criteria set out in clauses 5.13 and 5.14.

6. Process for approving a proposed purchaser

Potential purchasers

6.1. Sika must provide the ACCC and Approved Independent Auditor with:

- (a) the identity of any person who expresses an interest in acquiring the Divestiture Business;
- (b) the status of negotiations with each person; and
- (c) a copy of each person's offer to acquire the Divestiture Business, where relevant;

at the following times:

- (d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;
- (e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;

regardless of whether the person subsequently withdraws or is declined.

Provision of a notice for a Proposed Purchaser

6.2. To seek ACCC approval for a Proposed Purchaser, Sika or the Approved Divestiture Trustee must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).

6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Divestiture Period.

Purchaser approved at the time the Undertaking was accepted

6.4. At the time this Undertaking was accepted, the ACCC also considered information of the type required in a Proposed Purchaser Notice and approved the Proposed Purchaser identified in Schedule 11 as the Approved Purchaser of the Divestiture Business.

6.5. ACCC approval of the Proposed Purchaser identified in Schedule 11 as the Approved Purchaser of the Divestiture Business included approval of:

- (a) the Sale and Purchase Agreement in the form of the attached Confidential Schedule 8 as the Approved Sale and Purchase Agreement;
- (b) Transitional Services Agreement in the form of the Attached Confidential Schedule 9 and the Supply Agreement in the form of the Attached Confidential Schedule 10 as the Approved Transitional Supply Agreement.

Approval of a Proposed Purchaser after the Commencement Date

- 6.6. The ACCC may, in its discretion, approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice. In exercising this discretion, the ACCC will consider, without limitation:
- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.10 and 5.11; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.13 and 5.14.
- 6.7. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.6, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement and any ancillary agreement is consistent with this Undertaking;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of Sika;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has a history of competition law compliance;
 - (f) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (g) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (h) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.8. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7. Divestiture Business protection

Protection of the Divestiture Business

- 7.1. From the Control Date, Sika must not sell or transfer its interest, or any assets comprising part of, or used in, the Australian Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Acquisition.

Sika's obligations in relation to the Divestiture Business prior to completion of divestiture

- 7.2. Without limiting this clause 7, Sika must, from the Control Date until completion of the divestiture of the Australian Divestiture Business, take all steps available to it to:
- (a) ensure that the Australian Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Australian Divestiture Business at the Control Date;
 - (b) continue to provide access to working capital and sources of credit for the Australian Divestiture Business in a manner which is consistent with the financing of the Australian Divestiture Business before the Control Date;
 - (c) continue to provide administrative and technical support for the Australian Divestiture Business in a manner which is consistent with the operation of the Australian Divestiture Business before the Control Date and in accordance with any plans established before the Control Date;
 - (d) continue existing Agreements relating to the Australian Divestiture Business with customers, suppliers and/or other third parties that are in place at the Control Date;
 - (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Australian Divestiture Business on commercial terms favourable to the Australian Divestiture Business;
 - (f) maintain the supply of those goods and services that are part of the Australian Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Australian Divestiture Business as at the Control Date;
 - (h) promote and market the products that form part of the Australian Divestiture Business in accordance with any plans established before the Control Date; and
 - (i) carry out such other actions or plans that the Approved Monitoring Trustee considers to be necessary or convenient to maintain the Australian Divestiture Business as an effectively competitive going concern.

Personnel of Sika

- 7.3. From the Control Date until completion of the divestiture of the Australian Divestiture Business, Sika must:
- (a) in consultation with the Hold Separate Manager, replace any
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;

who leave or will leave the Australian Divestiture Business before divestiture;

- (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the:
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Australian Divestiture Business; and
 - (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Australian Divestiture Business as at the Control Date to any other business operated by Sika.
- 7.4. As soon as practicable after the Commencement Date, Sika must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Sika's obligations under this Undertaking.

Sika's ongoing obligations in relation to the Divestiture Business

- 7.5. To the extent Sika has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.10 to 5.15 of this Undertaking in relation to the Australian Divestiture Business, Sika must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.6. Subject to clause 7.7, Sika must not, at any time from the Commencement Date, use or disclose any Confidential Information about the Divestiture Business gained through:
- (a) ownership and/or management of the Divestiture Business; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.7. Clause 7.6 does not apply to information that Sika requires to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Sika who need to know the information to carry out the permitted purpose.

8. Hold Separate Manager and Approved Monitoring Trustee

EC Commitments

- 8.1. Pursuant to the EC Commitments, from the date of the adoption of the EC Decision:

- (a) the Hold Separate Manager will manage the Divestiture Business under the supervision of the Monitoring Trustee until completion of the divestment of the Divestiture Business; and
 - (b) the Monitoring Trustee shall assume and perform its specified duties and obligations, including those set out in paragraph 30 of the EC Commitments.
- 8.2. In the event that completion of the divestment of the Australian Divestiture Business to an Approved Purchaser does not take place on or before the Control Date, then:
- (a) Sika must appoint and maintain an Approved Monitoring Trustee to oversee, in close cooperation with the Hold Separate Manager, the ongoing management of the Divestiture Business, from the Control Date until the completion of the divestiture of the Australian Divestiture Business in accordance with this Undertaking; and
 - (b) the provisions of this clause 8 will apply.

Process for approving the Proposed Monitoring Trustee

- 8.3. At least 15 Business Days before the Control Date, Sika must provide the ACCC with a notice for approval of the appointment of the Proposed Monitoring Trustee in the form prescribed in Schedule 3 to this Undertaking (**Proposed Monitoring Trustee Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.4. If clauses 8.13, 8.14 or 8.15 apply, Sika must provide the ACCC with a Proposed Monitoring Trustee Notice within five Business Days after the relevant event occurs, otherwise clause 8.9 applies.
- 8.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Monitoring Trustee identified in the Proposed Monitoring Trustee Notice.
- 8.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Monitoring Trustee, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Monitoring Trustee Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
 - (b) person named in the Proposed Monitoring Trustee Notice or identified by the ACCC is sufficiently independent of Sika;
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Monitoring Trustee

- 8.7. After receiving a written notice from the ACCC of its approval of the Proposed Monitoring Trustee, the draft terms of appointment and draft separation and management plan, Sika must by the Control Date:

- (a) appoint the person approved by the ACCC as the Approved Monitoring Trustee on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

8.8. If:

- (a) the Approved Monitoring Trustee has not been appointed by the Control Date;
- (b) the Approved Monitoring Trustee has not been appointed within 15 Business Days after the Approved Monitoring Trustee resigns or otherwise ceases to act as the Approved Monitoring Trustee pursuant to clause 8.13, 8.14 or 8.15; or
- (c) the ACCC has not received a Proposed Monitoring Trustee Notice pursuant to clause 8.3;

then clause 8.9 applies.

8.9. If clause 8.8 applies, the ACCC may, in its discretion:

- (a) identify and approve a person as the Approved Monitoring Trustee, including approving the draft terms of appointment of the Approved Monitoring Trustee and the draft separation and management plan; and/or
- (b) direct Sika to appoint a person who the ACCC has deemed is an Approved Monitoring Trustee.

Obligations and powers of the Approved Monitoring Trustee

8.10. Sika must procure that any proposed terms of appointment for the Approved Monitoring Trustee include obligations on the Approved Monitoring Trustee to:

- (a) maintain his or her independence from Sika, apart from appointment to the role of Approved Monitoring Trustee, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Sika for the period of his or her appointment;
- (b) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
- (c) not use any Confidential Information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Monitoring Trustee;
- (d) make only those Material Changes to the Divestiture Business which the ACCC does not object to;

- (e) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from Sika;
- (f) co-operate with the requests of any Approved Divestiture Trustee or Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) provide the following reports directly to the ACCC:
 - (i) a monthly written report (within 15 days after the end of every month) regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
 - (ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or Sika's compliance with this Undertaking; and
- (h) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as the Approved Monitoring Trustee pursuant to this Undertaking.

8.11. Sika must procure that any proposed terms of appointment for the Approved Monitoring Trustee provide the Approved Monitoring Trustee with the sole authority to:

- (a) manage and operate the Divestiture Business, in close co-operation with the Hold Separate Manager, according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Business;
- (b) provide any information requested by Sika pursuant to the protocol in the Approved Separation and Management Plan;
- (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Business requested by Sika which is not covered by the protocol in the Approved Separation and Management Plan;
- (d) in close co-operation with the Hold Separate Manager, renew or replace upon expiry Material Contracts and enter into new contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
- (e) in close co-operation with the Hold Separate Manager, engage, redeploy or make redundant personnel employed in the Divestiture Business as the Approved Monitoring Trustee determines necessary; and
- (f) engage any external expertise, assistance or advice required by the Approved Monitoring Trustee to perform his or her functions as the Approved Monitoring Trustee.

Sika's obligations in relation to the Approved Monitoring Trustee

8.12. Without limiting its obligations in this Undertaking, Sika must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Monitoring Trustee;

- (b) maintain and fund the Approved Monitoring Trustee to carry out his or her functions, including:
 - (i) indemnifying the Approved Monitoring Trustee for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Monitoring Trustee of his or her functions as the Approved Monitoring Trustee except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Monitoring Trustee;
 - (ii) ensuring that the Approved Monitoring Trustee is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Monitoring Trustee considers are required by the Divestiture Business; and
 - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Monitoring Trustee to perform his or her functions as the Approved Monitoring Trustee; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Monitoring Trustee's ability to carry out his or her obligations as the Approved Monitoring Trustee, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Monitoring Trustee as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business required by the Approved Monitoring Trustee;
 - (iii) providing to the Approved Monitoring Trustee any information or documents that he or she considers necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting information or reports regarding the Divestiture Business from the personnel of the Divestiture Business except through the Approved Monitoring Trustee; and
 - (v) not appointing the Approved Monitoring Trustee, or have any Agreements with the Approved Monitoring Trustee, to utilise the Approved Monitoring Trustee's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Monitoring Trustee ceases to act in the role of the Approved Monitoring Trustee.

Resignation, revocation or termination of the Approved Monitoring Trustee

- 8.13. Sika must immediately notify the ACCC in the event that the Approved Monitoring Trustee resigns or otherwise stops acting as the Approved Monitoring Trustee before the completion of the divestiture of the Divestiture Business.

- 8.14. The ACCC may revoke an Approved Monitoring Trustee's status as the Approved Monitoring Trustee if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.15. The ACCC may approve any proposal by, or alternatively may direct, Sika to terminate the appointment of the Approved Monitoring Trustee if in the ACCC's view the Approved Monitoring Trustee acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 9.1. Sika must appoint and maintain an Approved Independent Auditor to audit and report upon Sika's compliance with this Undertaking in so far as it concerns the Australian Divestiture Business.

Process for approving a Proposed Independent Auditor

- 9.2. At least 15 Business Days before the Control Date, Sika must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. The Approved Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Approved Independent Auditor's term, Sika must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or who has been, the Approved Independent Auditor is eligible for reappointment as the Approved Independent Auditor.
- 9.4. If clauses 9.17, 9.18 or 9.19 apply, Sika must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.9 applies.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Sika;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 9.7. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Sika must by the Control Date:

- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

9.8. If:

- (a) the Approved Independent Auditor has not been appointed by the Control Date;
- (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or
- (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.2;

then clause 9.9 applies.

9.9. If clause 9.8 applies, the ACCC at its absolute discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct Sika to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

9.10. Sika must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from Sika, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Sika for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the factors (as relevant) in clause 6.7;
- (d) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 9.12;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and

- (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 9.10(c); and
 - (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- 9.11. Sika must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Business and Sika's other businesses as required by the Approved Independent Auditor;
 - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
 - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

- 9.12. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (b) a full audit of Sika's compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
 - (d) all of the reasons for the conclusions reached in the Audit Report;
 - (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) Sika's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Sika's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.

- 9.13. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Sika at the following times:
- (a) within 20 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to Sika that it is satisfied that Sika has fulfilled its obligations pursuant to this Undertaking; and
 - (d) if requested by the ACCC, a final report due three months after the last report provided pursuant to clause 9.13(c).
- 9.14. Sika must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.15. Sika must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

Sika's obligations in relation to the Approved Independent Auditor

- 9.16. Without limiting its obligations in this Undertaking, Sika must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
 - (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing Sika personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;

- (ii) providing access to the facilities, sites or operations of the Divestiture Business and Sika's other businesses as required by the Approved Independent Auditor;
- (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
- (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
- (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 9.17. Sika must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.18. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.19. The ACCC may approve any proposal by, or alternatively may direct, Sika to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

10. Failure to divest the Divestiture Business within the Initial Divestiture Period

Divestiture of the Unsold Business

- 10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Divestiture Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 10 apply.

Obligation to appoint a Divestiture Trustee

- 10.2. From the end of the Initial Divestiture Period, Sika must appoint and maintain an Approved Divestiture Trustee to effect the divestiture of the Unsold Business.

Process for approving a Proposed Divestiture Trustee

- 10.3. At least 15 Business Days prior to the end of the Initial Divestiture Period, if:
 - (a) the divestiture of the Divestiture Business has not been completed; or

- (b) Sika is required to appoint a Divestiture Trustee under the EC Commitments,

Sika must provide the ACCC with a notice for a Proposed Divestiture Trustee in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Trustee Notice**) including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan.

- 10.4. If clauses 10.15, 10.16 or 10.17 apply, Sika must provide the ACCC with a Proposed Divestiture Trustee Notice within five Business Days after the relevant event occurs.
- 10.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Trustee.
- 10.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Trustee, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Divestiture Trustee Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Trustee;
 - (b) person named in the Proposed Divestiture Trustee Notice or identified by the ACCC is sufficiently independent of Sika;
 - (c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Trustee

- 10.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Trustee, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, Sika must within two Business Days:
 - (a) appoint the person approved by the ACCC as the Approved Divestiture Trustee on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 10.8. If:
 - (a) the Approved Divestiture Trustee has not been appointed within 10 Business Days after the Divestiture Business becomes an Unsold Business;
 - (b) the Approved Divestiture Trustee has not been appointed within 15 Business Days after the Approved Divestiture Trustee resigns or otherwise ceases to act pursuant to clauses 10.15, 10.16 or 10.17; or
 - (c) the ACCC has not received a Proposed Divestiture Trustee Notice pursuant to clause 10.4;

then clause 10.9 applies.

- 10.9. If clause 10.8 applies, the ACCC may, at its absolute discretion, having regard to Sika's obligations under the EC Commitments:
- (a) identify and approve a person as the Approved Divestiture Trustee, including approving the draft terms of appointment of the Approved Divestiture Trustee, draft business sale agreement and draft marketing and sale plan; and/or
 - (b) direct Sika to appoint a person who the ACCC has deemed is an Approved Divestiture Trustee
- 10.10. For the avoidance of doubt, the intention of clause 10.9 is not to oblige Sika to take any step or engage in any act that would cause it to be in breach of the EC Commitments or any applicable laws.

Obligations and powers of the Approved Divestiture Trustee

- 10.11. Sika must procure that any proposed terms of appointment for the Approved Divestiture Trustee include obligations on the Approved Divestiture Trustee to:
- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
 - (b) maintain his or her independence from Sika, apart from appointment to the role of Approved Divestiture Trustee, including not form any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Sika for the period of his or her appointment;
 - (c) not use any Confidential Information gained through the divestiture of the Unsold Business other than for performing his or her functions as the Approved Divestiture Trustee;
 - (d) follow the Approved Marketing and Sale Plan;
 - (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
 - (f) co-operate with the requests of any Approved Monitoring Trustee or Approved Independent Auditor appointed pursuant to this Undertaking;
 - (g) within 15 days after the end of every month following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Trustee in undertaking his or her duties by month and to the date of the report;

- (iv) a schedule of agreed fees of the Approved Divestiture Trustee (including the fees of any adviser appointed under clause 10.12(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
- (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Trustee in fulfilling his or her duties; and
 - (iii) all agreed fees of the Approved Divestiture Trustee (including the fees of any adviser appointed under clause 10.12(d));
- (i) immediately inform the ACCC of:
- (i) any issues that arise in relation to the implementation of the Approved Business Sale Agreement and any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Business;
- (j) accept any offer for the Unsold Business upon instruction from Sika given in accordance with clause 11.1(d); and
- (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as the Approved Divestiture Trustee pursuant to this Undertaking.

10.12. Sika must procure that any proposed terms of appointment for the Approved Divestiture Trustee contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Trustee to:

- (a) negotiate with potential purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Trustee in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
- (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.6;
- (c) upon instruction pursuant to clause 11.1(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and

- (d) engage any external expertise, assistance or advice required by the Approved Divestiture Trustee to perform his or her functions as the Approved Divestiture Trustee.
- 10.13. Any irrevocable power of attorney granted pursuant to clause 10.12 will end upon resignation or termination of the Approved Divestiture Trustee in accordance with clauses 10.15, 10.16 and 10.17, or in the event that the Unsold Business is divested in accordance with this Undertaking.

Sika's obligations in relation to the Divestiture Trustee

- 10.14. Without limiting its obligations in this Undertaking, Sika must from the end of the Initial Divestiture Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Trustee;
 - (b) maintain and fund the Approved Divestiture Trustee to carry out his or her functions, including:
 - (i) indemnifying the Approved Divestiture Trustee for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Trustee of his or her functions as the Divestiture Trustee except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Trustee;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Trustee to perform his or her functions as the Approved Divestiture Trustee;
 - (iii) paying such fees as are agreed between the Approved Divestiture Trustee and Sika (but not fees contingent on the price to be obtained for the Unsold Business); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Trustee and Sika within 15 Business Days after the end of the Initial Divestiture Period, Sika agrees to pay such fees as are directed by the ACCC;
 - (c) not interfere with, or otherwise hinder, the Approved Divestiture Trustee's ability to carry out his or her functions as the Approved Divestiture Trustee, including:
 - (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Trustee; and
 - (iii) providing to the Approved Divestiture Trustee any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Trustee or for reporting to or otherwise advising the ACCC;
 - (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.6, Sika must instruct the Approved Divestiture Trustee to complete

the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6; and

- (e) other than in accordance with clause 10.14(d) of this Undertaking, not instruct the Approved Divestiture Trustee to divest the Unsold Business.

Resignation, revocation or termination of the Divestiture Trustee

- 10.15. Sika must immediately notify the ACCC in the event that an Approved Divestiture Trustee resigns or otherwise stops acting as a divestiture trustee before the completion of the divestiture of the Unsold Business.
- 10.16. The ACCC may revoke an Approved Divestiture Trustee's status as the Approved Divestiture Trustee if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.17. The ACCC may approve any proposal by, or alternatively may direct, Sika to terminate an Approved Divestiture Trustee if in the ACCC's view the Approved Divestiture Trustee acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

11. Notification of key dates and ACCC requests for information

- 11.1. Sika must notify the ACCC and each Undertaking Appointment in writing of:
 - (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.
- 11.2. The ACCC may direct Sika in respect of its compliance with this Undertaking to, and Sika must:
 - (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Sika's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to Sika, in accordance with clause 19.2.

- 11.4. In respect of Sika's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5. Sika will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.
- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.7. The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which Sika has a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. Sika and the ACCC agree that Confidential Schedule 6 will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business and, subject to this clause 12.1, Confidential Schedules 4A, 5, 7, 8, 9 and 10 will remain confidential.
- 12.2. Sika acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedules 5, 6, 7, 8, 9 and 10.
- 12.3. Sika acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:

- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

- 13.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Sika to take or refrain from taking some action, Sika will procure that Related Body Corporate to take or refrain from taking that action.

14. No derogation

- 14.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Sika of any term of this Undertaking.
- 14.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Sika does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

15. Change of Control

- 15.1. In the event that a Change of Control is reasonably expected to occur, Sika must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Sika pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Sika in writing that a section 87B undertaking under this clause 15 is not required.

16. Costs

- 16.1. Sika must pay all of its own costs incurred in relation to this Undertaking.

17. Jurisdiction

- 17.1. Sika irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 17.2. Unless and until notified in writing by Sika to the ACCC of the appointment of another person as agent within Australia, Sika appoints Sika Australia Pty Ltd (ACN 001 342 329), as its agent for the purposes of service of process in relation to this Undertaking.

- 17.3. Sika appoints the following person for the purpose of this clause 17:

Raffaella Marzi
Head of Corporate HR and Compliance
Sika AG
Zugerstrasse 50, 6340 Baar, Switzerland
+41 58 436 68 59
marzi.raffaella@ch.sika.com

18. Resolving inconsistencies

- 18.1. To the extent there are inconsistencies between this Undertaking and any of the following:

- (a) Approved Sale and Purchase Agreement;
- (b) Approved Transitional Technical Assistance Agreement; or
- (c) Approved Transitional Supply Agreement,

as regards to Sika's obligations pursuant to this Undertaking, this Undertaking prevails.

19. Notices

Giving Notices

- 19.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger, Exemptions & Digital Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination & Remedies Branch
Merger, Exemptions & Digital Division

- 19.2. Any notice or communication to Sika pursuant to this Undertaking must be sent to:

Name: Raffaella Marzi

Address: Zugerstrasse 50, 6340 Baar, Switzerland

Email Address: marzi.raffaella@ch.sika.com

With a copy sent to:

Name: Georgina Foster

Address: Baker McKenzie
Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

Email Address: georgina.foster@bakermckenzie.com

- 19.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 19.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 19.5. Sika must notify the ACCC of a change to its contact details within three Business Days.
- 19.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 19.3 and 19.4, will be taken to be received.

20. Defined terms and interpretation

Definitions in the Dictionary

- 20.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 20.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Sika AG by its authorised signatory in the presence of:

Witness:

Authorised signatories:



Matthias Bellwald
Head Corporate M&A



Adrian Widmer
CFO Sika Group



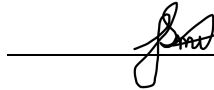
Raffaella Marzi
Head Corporate HR
and Compliance

Date: April 12, 2023

Date: April 12, 2023

Executed by Sika Australia Pty Ltd (ACN 001 342 329) pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director



Signature of a ~~director~~/company secretary

Name of director (print)

Gerhardus Smit

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

Date

13.04.2023

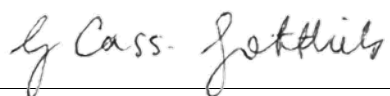
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

18 April 2023

Date

and signed on behalf of the Commission:



Chair

18 April 2023

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Business Sale Agreement means the standard form contract for the divestiture of the Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Divestiture Trustee means one or more natural or legal person(s) who is/are approved by the ACCC and appointed under clause 10 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

Approved Monitoring Trustee means one or more natural or legal person(s) who is/are approved by the ACCC and appointed under clause 8 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

Approved Purchaser means the person approved by the ACCC under clause 6 of this Undertaking.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Sika will divest the Divestiture Businesses to the Approved Purchaser and the Approved Purchaser will acquire the Divestiture Business from Sika.

Approved Separation and Management Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Monitoring Trustee will:

- a) oversee the separation of the Divestiture Business from any business to be retained by Sika; and
- b) oversee, in close cooperation with the Hold Separate Manager, the ongoing management and operation of the Divestiture Business independent of Sika and any retained business.

Approved Terms of Appointment means the terms of appointment for the Approved Divestiture Trustee, Approved Independent Auditor and Approved Monitoring Trustee as approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by Sika to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Technical Assistance Agreement means any agreement, for the supply of Technical Assistance by Sika to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 9.12 of this Undertaking.

Australian Divestiture Business means the business undertaken by MB Solutions Australia Pty Ltd and Bluey Technologies Pty Ltd and includes all assets and liabilities of those entities, including the assets out in Schedule 4.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Sika to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable Sika to continue to comply with this Undertaking in its entirety.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Confidential Information means any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Consents means any Government Consents or Third Party Consents.

Control Date means the date on which the Proposed Acquisition is completed.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Business means the business as defined in Section B and in Schedule A of the EC Commitments and includes with respect to Australia the items described in Schedule 4 to this Undertaking.

Divestiture Trustee has the same meaning as in the EC Commitments.

EC Commitments means the commitments made by Sika, and formally accepted by the European Commission, in relation to the divestiture of the Divestiture Business on terms substantially in the form of those submitted to the European Commission by Sika on 18 January 2023 and enclosed at Confidential Schedule 7 to this Undertaking.

EC Decision means the European Commission's decision pursuant to Article 6(1)(b) of the Council Regulation (EC) No 139/2004 to declare Sika's acquisition of the MBCC Group compatible with the internal market and the functioning of the EEA Agreement.

EEA means the Member States of the European Union and Norway, Iceland and Liechtenstein.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 9.13(a) of this Undertaking.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Hold Separate Manager has the same meaning as in the EC Commitments.

Holding Company has the meaning given by section 9 of the Corporations Act.

Initial Divestiture Period is defined in clause 1 of Confidential Schedule 6 to this Undertaking.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

Material Contract means any Agreement that is necessary for the operation of the Divestiture Business.

Monitoring Trustee has the same meaning as in the EC Commitments.

Parties means the parties to the Proposed Acquisition as defined in clause 2 of this Undertaking.

Proposed Acquisition is defined in clause 2.3 of this Undertaking.

Proposed Divestiture Trustee means a person named in a Proposed Divestiture Trustee Notice.

Proposed Divestiture Trustee Notice has the meaning given to it in clause 10.3 of this Undertaking.

Proposed Independent Auditor means a person named in a Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 9.2 of this Undertaking.

Proposed Monitoring Trustee means a person named in Proposed Monitoring Trustee Notice.

Proposed Monitoring Trustee Notice has the meaning given to it in clause 8.3 of this Undertaking.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice has the meaning given to it in clause 6.2 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Purchaser has the same meaning as in the EC Commitments.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Sika has the meaning given to it in clause 1.1 of this Undertaking.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Third Party Consents means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Australian Divestiture Business.

Transferred Personnel has the meaning given to it in clause 5.8 of this Undertaking.

Trustee Divestiture Period is defined in part 2 of Confidential Schedule 6 to this Undertaking.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

Undertaking Signatories has the meaning given to it in clause 1.1 of this Undertaking.

Unsold Business has the meaning given to it in clause 10.1 of this Undertaking.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;

- (p) in performing its obligations under this Undertaking, Sika will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

This form sets out the information required by the ACCC in relation to a Proposed Purchaser.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – [insert name of undertaking]
Address: mergers@acc.gov.au
Attention: Executive General Manager – Merger, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au
Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch,
Merger, Exemptions & Digital Division

2. Information Required

The ACCC requires the following information in order to assess a Proposed Purchaser.

2.1 Proposed Purchaser details:

- (a) Name of the Proposed Purchaser;
- (b) Address;
- (c) Contact name;
- (d) Telephone number; and
- (e) Other contact details.

2.2 A submission containing the following information:

- (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (b) details of the Proposed Purchaser's experience in the relevant market(s);
- (c) the names of the owner(s) and the director(s) of the Proposed Purchaser;
- (d) details of any of the following types of relationships between Sika and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

- (i) Sika and the Proposed Purchaser are Associated Entities;
 - (ii) Sika is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Sika;
 - (iv) Sika and the Proposed Purchaser are Related Entities;
 - (v) Sika and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Sika is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Sika and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Proposed Purchaser is a supplier of Sika or has been in the past three years;
 - (ix) Sika is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Sika and the Proposed Purchaser that allows one to affect the business decisions of the other;
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of Sika:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (i) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (ii) whether the Proposed Purchaser is of good financial standing;
 - (iii) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (iv) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (v) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
 - (vi) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

2.3 Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking;
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking;
- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking; and
- (d) any documents required to support the information provided by Sika pursuant to this form.

Schedule 3 – Undertaking Appointment Form

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Approved Monitoring Trustee;
- Approved Independent Auditor; or
- Approved Divestiture Trustee

(the **Undertaking Appointment**).

This form is to be used for each of the above appointments.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed [only include relevant Undertaking Appointment i.e. Monitoring Trustee/Independent Auditor/Divestiture Trustee] Notice – [insert name of undertaking]

Address: mergers@acc.gov.au

Attention: Executive General Manager – Mergers, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch, Mergers, Exemptions & Digital Division

2. Information Required

The ACCC requires the following information in order to assess a Proposed Monitoring Trustee, Proposed Independent Auditor or Proposed Divestiture Trustee (i.e. the relevant Undertaking Appointment).

2.1 Proposed Undertaking Appointment details:

- (a) the name of the proposed Undertaking Appointment; and
- (b) the name of the proposed Undertaking Appointment's employer and contact details including:
 - (i) Address;
 - (ii) Contact name;
 - (iii) Telephone number; and

- (iv) Other contact details.

2.2 A submission containing the following information:

- (a) details of the Undertaking Appointment's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking;
- (b) the names of the owner(s) and the director(s) of the Undertaking Appointment's employer;
- (c) details of any of the following types of relationships between Sika and the Undertaking Appointment or the Undertaking Appointment's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Sika and the Undertaking Appointment's employer are Associated Entities;
 - (ii) Sika is an Entity Connected with the Undertaking Appointment's employer;
 - (iii) The Undertaking Appointment's employer is an Entity Connected with Sika;
 - (iv) Sika and the Undertaking Appointment's employer are Related Entities;
 - (v) Sika and the Undertaking Appointment's employer are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Sika is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment;
 - (vii) Sika and the Undertaking Appointment or the Undertaking Appointment's employer have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Undertaking Appointment's employer is a supplier of Sika or has been in the past three years;
 - (ix) Sika is a supplier of the Undertaking Appointment's employer or has been in the past three years; and
 - (x) any other relationship between Sika and the Undertaking Appointment or the Undertaking Appointment's employer that allows one to affect the business decisions of the other;
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC within the past three years.

2.3 A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

3. Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Independent Auditor

- 3.1 A finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans regard to the Establishment Audit and the Audit Report.

Proposed Divestiture Trustee

- 3.2 The finalised draft business sale agreement drafted by the Proposed Divestiture Trustee in consultation with Sika. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 3.3 The Proposed Divestiture Trustee's draft marketing and sale plan for the Unsold Business.

Proposed Monitoring Trustee

- 3.4 The finalised draft separation and management plan for the Divestiture Business, detailing the measures and timing to be implemented by Sika and the Approved Monitoring Trustee in order to fulfil Sika's and the Approved Monitoring Trustee's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Monitoring Trustee in consultation with Sika to achieve the objectives of the Undertaking including:
- (a) the intended mode of operation of the Divestiture Business until completion of its divestiture;
 - (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from Sika, including the:
 - (i) separation of the books and records of the Divestiture Business from those of Sika;
 - (ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
 - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by Sika, to the extent possible without compromising the viability of the Divestiture Business;
 - (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;

- (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;
- (e) any Material Changes to the Divestiture Business required in order to fulfil Sika's and the Approved Monitoring Trustee's obligations pursuant to the Undertaking; and
- (f) the cooperation required from the Approved Monitoring Trustee with Sika in relation to the divestiture of the Divestiture Business, including:
 - (i) the activities to be conducted by the Approved Monitoring Trustee that are necessary for the effective operation of the Divestiture Business, having regard to the nature of the Divestiture Business (including the extent to which the Divestiture Business already has a management structure in place prior to the Proposed Acquisition that will be retained during the hold separate period);
 - (ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed;
 - (iii) the method by which the Approved Monitoring Trustee and Sika will preserve the confidentiality of the Divestiture Business's competitively sensitive information from Sika and its advisers throughout this process; and
 - (iv) a protocol whereby the Approved Monitoring Trustee can provide any information requested by Sika without disclosing the details of the Divestiture Business's competitively sensitive information to Sika.

Schedule 4 – Divestiture Business

The Australian Divestiture Business means the business undertaken by MB Solutions Australia Pty Ltd and Bluey Technologies Pty Ltd and includes all assets and liabilities of the Divestiture Business, including the assets set out below.

1. MBCC Australia sites

1.1 Clayton site (lease) - Victoria

| Site | Details |
|-------------------------|--|
| Address | Unit 3, 80 Fairbank Rd, Clayton South, Victoria |
| Landlord | Aldervale Investments Pty Ltd (ACN 006 250 620) |
| Premises | Lot 3 on Plan of Subdivision PS 548309M being the land contained in Certificate of Title Volume 11023 Folio 631. |
| Lease term | 1 January 2022 to 1 January 2024 (2 years) |
| Further term | 2 years |
| Licences and permits | Dangerous Goods & Storage Trade Waste Consent |
| Material assets on-site | <ul style="list-style-type: none"> • QC lab • sales office • dispenser technician workshop • 2 x mixing vessels • 1 x tri-blender • bulk chemical storage • IBC filling • 20L package line bulk admixture distribution |

1.2 Eagle Farm site (lease) - Queensland

| Site | Details |
|----------------------|---|
| Address | 731 Curtin Ave East, Eagle Farm, Queensland |
| Landlord | V&V Properties Pty Ltd as Trustee (ACN 094 809 640) |
| Premises | Lease D on SP 183390 Title Reference - 50536036. Tenancy A, 731 Curtin Ave East, Pinkenba Qld |
| Lease term | 1 May 2018 to 30 April 2023, subsequently extended for 7 years to 30 April 2030 |
| Further term | 6 months' notice period only |
| Licences and permits | Certificate of Registration of Plant |

| Site | Details |
|--------------------------------|---|
| | Manifest of a quantity workplace, issued 15 June 2020 Environmental Authority, issued 4 June 2020 |
| Material assets on-site | <ul style="list-style-type: none"> • QC lab • Sales Office • Dispenser technician workshop • 2 x Mixing vessels • 1 x tri-blender • bulk chemical storage • IBC filling • 20L packing line • Bulk admixture distribution |

1.3 Pooraka site (lease) - South Australia

| Site | Details |
|--------------------------------|--|
| Address | Unit 2, 43 - 55 Produce Lane, Pooraka, Adelaide |
| Landlord | ESR, trading as Gallop Australian Sub TC Pty Ltd As Trustee For Gallop Goldsborough Trust (ABN 25 818 384 177) |
| Premises | Portion of land in CT Volume 6118 Folio 129 being the area marked "Warehouse 2" and "Office 2" in Field Plan 54606 |
| Lease term | 1 October 2020 to 1 September 2025 (5 years) |
| Further term | 5 years |
| Licences and permit | Certificate of Plant Registration Dangerous Substance Licence EPA Licence |
| Material assets on-site | <ul style="list-style-type: none"> • QC lab • sales office • dispenser technician workshop • 2 x AFA vessels • 1 x Admixture vessel • 1 x tri-blender, bulk chemical storage • IBC filling • 20L packing line. |

1.4 Huntingwood site (lease) - New South Wales

| Site | Details |
|-----------------|---|
| Address | 27-29 Liberty Rd, Huntingwood, 2148 New South Wales |
| Landlord | MWH-S PTY LTD (ACN 643 787 839) |

| | |
|--------------------------------|--|
| Premises | Part 27-29 Liberty Rd, Huntingwood NSW 2148, as shown cross hatched on plan attached as Annexure "B" Part folio identifier 2/855721 |
| Lease term | 22 November 2021 to 22 November 2023 (2 years) |
| Further term | None |
| Licences and permits | None |
| Material assets on-site | A leased warehouse with no MBS plant except for leased forklift units. |

1.5 **Norwest site (lease) – New South Wales**

| Site | Details |
|--------------------------------|---|
| Address | Unit 1.02, 2 Burbank Place, Norwest, 2153 New South Wales |
| Landlord | GU Custodian Pty Limited (ACN 092 406 892) Address: c/-Suite G02, 50 Norwest Boulevard, Norwest NSW 2153 |
| Premises | Unit 1.02 (first floor) at 2 Burbank Place, Norwest - 2153 |
| Lease term | 5 years (commencement on 1 February 2023) |
| Further term | Optional + 5 years |
| Licences and permits | None |
| Material assets on-site | Office furniture IT equipment (moved from Bluey office located in Pymont (SYD) which was shut down on 14 January 2023) |

1.6 Wycombe site - Western Australia

| Site | Details |
|-------------------------|---|
| Address | 960 and 980 Abernethy Rd, High Wycombe, Perth |
| Landlord | Muluckine Pty Ltd (ACN 155 702 506) as trustee for the Muluckine Trust, Bowsprit WA Pty Ltd (ACN 635 388 046) as trustee for the Bowsprit Unit Trust and Adcumulo Property Pty Ltd (ACN 638 768 831) as trustee for the Adcumulo Property Trust all of PO Box 447, Welshpool DC, Western Australia |
| Premises | Lots 3 and Lot 4 on Deposited Plan 408098 and being the whole of the land comprised on Certificates of Title Volume 4000 Folios 311 and 312. |
| Lease term | 10 years (commencement date to be advised) |
| Further term | Two periods of 5 years each |
| Licences and permits | None |
| Material assets on-site | N/A (not currently in use) |

2. Bluey sites

2.1 Clontarf site (lease) - New South Wales

| Site | Details |
|---------------|---|
| Address | 4/27 Huntington Street, Clontarf |
| Lessor | McArthur & Associates |
| Lease details | Commercial Tenancy (Storage) |
| Lease Term | 20 September 2021 - 20 September 2023 (12 months, subsequently extended for a further 12 month period) |
| Further term | 1 year + 1 year |

2.2 Bulimba site (lease) - Queensland

| Site | Details |
|---------------|---------------------------------------|
| Address | 1/189 Oxford Street, Bulimba QLD 4171 |
| Lessor | Tim Altass |
| Lease details | Commercial Tenancy (Office) |

| Site | Details |
|--------------|--|
| Lease Term | 1 November 2020 - 31 October 2023 (3 years) |
| Further term | 3 years |

3. Other associated assets

- 3.1 Subject to the terms of the agreement between MB Solutions Australia Pty Ltd and Solenis Australia Pty Ltd dated 9 May 2022, all MBCC owned equipment located at the Solenis site at 9 Leath Rd, Kwinana, Western Australia including:
- (a) AFA production equipment;
 - (b) admixture production equipment; and
 - (c) bulk chemical storage tanks.
- 3.2 All other fixtures, equipment, machinery and all other property of a tangible nature held by MBCC Australia (at its sites or otherwise located or stored at third-party storage facilities) for the purposes of carrying on the Divestiture Business.
- 3.3 All assets and equipment owned by the Divestiture Business located at customers' premises, including all dispensing equipment, tanks and pumps.

4. Intellectual property

- 4.1 All necessary intellectual property rights used by MBCC Australia, including:

(a) Unregistered Trademarks

Transfer of the Master Builders Solutions and the following Bluey Technologies unregistered trademarks:

- (i) BluCem;
- (ii) BluGeo;
- (iii) BluRez; and
- (iv) BluSeal.

(b) Registered Trademarks

Transfer of the following trademarks registered in Australia owned by Construction Research & Technology GmbH:

| Trademark | Australian registration number |
|-----------------|--------------------------------|
| Anvil-Top | 152874 |
| Emaco | 1366926 (IR 420420) |
| MasterAir | 1461369 |
| MasterBrace | 1461479 |
| Master Builders | 385589 |

| Trademark | Australian registration number |
|---------------------------------|---------------------------------------|
| Master Builders Solutions (new) | 1462710 |
| MasterCast | 1461380 |
| MasterColor | 1461439 |
| MasterCrete | 1461383 |
| MasterEase | 1725239 (IR 1267166) |
| MasterEmaco | 1533365 (IR 1141063) |
| MasterFiber | 1298944 (IR 1000253) |
| MasterFinish | 1461434 |
| MasterFlame | 1943689 (IR 1414458) |
| MasterFlex | 555105 |
| MasterFlow | 465060 |
| MasterGlenium | 1529922 (IR 1138319) |
| MasterInject | 1461456 |
| MasterKure | 183579 |
| MasterLife | 1461449 |
| MasterMatrix | 1817431 (IR 1138155) |
| MasterPel | 1461373 |
| MasterPolyheed | 1529923 (IR 1138320) |
| MasterPozzolith | 1529921 (IR 1138317) |
| MasterPren | 552714 |
| MasterProtect | 1461420 |
| MasterRheobuild | 1529920 (IR 1138316) |
| MasterRoc | 1461468 |
| MasterSeal | 1461463, 557983 |
| MasterSet | 1461379 |
| MasterSuna | 1800940 (IR 1312572) |
| MasterTile | 1487598 (IR 706314) |
| MasterWeld | 1461395 |
| MasterX-Seed | 2006965 (IR 1138318) |
| MasterTop | 478431, 557257 |
| Ucrete | 366822 |

| Trademark | Australian registration number |
|-----------|--------------------------------|
| Xolutec | 1856805 (IR 1353335) |

Transfer of the following unregistered trademarks in Australia owned by Construction Research & Technology GmbH: Green Sense, MasterCell, MasterCem, MasterSure and MB Slab.

Transfer of the following trademarks registered to Bluey Technologies:

| Trademark | Registration number |
|---------------------|---------------------|
| Bluey | 1025294 |
| Bluey dog head logo | 1025287 |

(c) Domain name

Transfer of the following domain names owned or licenced by MB Solutions Australia Pty Ltd:

| Domain name | Current registrant | Registrar | Domain date billed until |
|---|--|--------------|--|
| https://www.bluey.com.au/ | Daniel Bosco Bluey Construction Products Pty Ltd PO Box 240 Rozelle NSW 2039 AU accounts@bluey.com.au | Melbourne IT | 31 July 2025 |
| https://www.master-builders-solutions.com.au | MBS Solutions Australia Pty Ltd 11 Stanton Road Seven Hills NSW 2147 AU | CSC | 22 July 2023 Auto-renewal for 1 year in April |
| https://www.masterbuilderssolutions.com.au | MBS Solutions Australia Pty Ltd 11 Stanton Road Seven Hills NSW 2147 AU | CSC | 22 July 2023 Auto-renewal for 1 year in April |

(d) Registered IP (patents)

Transfer of the following Australian registered patents:

| Patent family | Title | Product category | Product covered by patent | Patent scope |
|---------------|---|--------------------|---------------------------|--------------|
| 59920 | Stable sprayed concrete accelerator compositions with high active content | Chemical admixture | Formulation | Product |
| 61502 | Dispersant containing a copolymer mixture | Chemical admixture | Formulation | Product |

| Patent family | Title | Product category | Product covered by patent | Patent scope |
|---------------|--|--------------------|---------------------------|--------------------------------|
| 59789 | Method and composition for injection at a tunnel boring machine | | Formulation | Product and Application Method |
| 60686 | Semi continuously operated process for the manufacturing of copolymers | Chemical admixture | Polymer | Process |
| 59860 | Polycondensation product based on aromatic and heteroaromatic compounds, their manufacturing process and use | Chemical admixture | Polymer | Product |
| 61281 | Process for the manufacturing of phosphatized polycondensation products and their use | Chemical admixture | Polymer | Process |
| 76059 | Additive for rheology improvement of inorganic binders | Chemical admixture | Polymer | Product |
| 61181 | Dispersant containing hardening accelerator composition | Chemical admixture | Intermediate | Process |
| 72497 | Hardening accelerator composition for cementitious compositions | Chemical admixture | Intermediate | Process |
| 59766 | HF-based accelerator | Chemical admixture | Formulation | Product |
| 59787 | Accelerator admixture | Chemical admixture | Formulation | Product |
| 59813 | Accelerator composition for accelerating setting and/or hardening of a cementitious composition | Chemical admixture | Formulation | Product |
| 59848 | Setting accelerator for sprayed concrete | Chemical admixture | Formulation | Product |
| 59867 | Liquid accelerator | Chemical admixture | Intermediate | Product |

| Patent family | Title | Product category | Product covered by patent | Patent scope |
|---------------|--|--------------------|---------------------------|-------------------------|
| 59871 | Phosphor-haltige Copolymere, Verfahren zu ihrer Herstellung und deren Verwendung | Chemical admixture | Intermediate | Product |
| 59878 | Copolymers based on phosphor containing monomers, process of manufacturing and their use | Chemical admixture | Formulation | Product |
| 61465 | Accelerator mixture | Chemical admixture | Formulation | Product |
| 60573 | Copolymers with polyether sidechains and hydroxyalkyl- and acid components | Chemical admixture | Formulation | Product |
| 62103 | Polymer admixture system for workability retention of cementitious compositions | Chemical admixture | Intermediate | Product |
| 60939 | Polymer admixture system for workability retention of cementitious compositions | Chemical admixture | Intermediate | Process |
| 60572 | Kontinuierlich betriebenes Verfahren zur Herstellung von Copolymeren | Chemical admixture | Formulation | Product |
| 61503 | Copolymer containing acid components and different polyether components | Chemical admixture | Intermediate | Process |
| 60802 | Process for the initiation of a radicalic polymerisation | Chemical admixture | Formulation | Process and Application |
| 62532 | Sprayable hydraulic binder composition and method of use | Chemical admixture | Intermediate | Process |
| 70352 | Hardening accelerator composition containing dispersants | Chemical admixture | Intermediate | Process |
| 70881 | A Process for Producing Polycondensation Product | Chemical admixture | Intermediate | Process |
| 72897 | Admixture and method for freeze-thaw damage resistance and/or scaling | Chemical admixture | Intermediate | Product |

| Patent family | Title | Product category | Product covered by patent | Patent scope |
|---------------|---|--------------------|---------------------------|--------------|
| | damage resistance of cementitious compositions | | | |
| 75081 | Admixture and Method for Freeze-Thaw Damage Resistance and Scaling Damage Resistance of Cementitious Compositions | Chemical admixture | Intermediate | Process |
| 75082 | Apparatus and System for Expanding an Expandable Polymer Product | Chemical admixture | Intermediate | Process |
| 72978 | Continuous process for the manufacture of copolymers | Chemical admixture | Intermediate | Product |
| 73190 | Additive for hydraulic hardening masses | Chemical admixture | Intermediate | Product |
| 71629 | Phosphatized polycondensation product based on aromatic compounds, its manufacturing process and use | Chemical admixture | Intermediate | Product |
| 74115 | Cationic Dispersants for Geopolymer Binder Systems | Chemical admixture | Formulation | Product |
| 76228 | Crack Reducing Admixture for Cementitious Compositions | Chemical admixture | Intermediate | Product |
| 74471 | Additiv für hydraulisch abbindende Massen | Chemical admixture | Intermediate | Product |
| 76593 | Additiv für hydraulisch abbindende Massen | Chemical admixture | Intermediate | Product |
| 77524 | Accelerator composition | Chemical admixture | Intermediate | Product |
| 78205 | Polycondensate based water-reducer | Chemical admixture | Intermediate | Product |
| 75493 | Additive for hydraulically setting compositions | Chemical admixture | Formulation | Product |

| Patent family | Title | Product category | Product covered by patent | Patent scope |
|---------------|--|--------------------|---------------------------|-------------------------|
| 160523 | Strength Enhancing Admixture For Cementitious Compositions | Chemical admixture | Intermediate | Product |
| 78327 | Copolymers suitable for plastizing inorganic binder systems | Chemical admixture | Process | Process |
| 78718 | Verfahren zur Behandlung von Schlacke | Chemical admixture | Formulation | Product |
| 170296 | A dispersant composition | Chemical admixture | Formulation | Product |
| 170811 | Set control composition for cementitious systems | Chemical admixture | Concrete Mix | Application |
| 190189 | Sprayed concrete compositions with performance enhancing admixtures | Chemical admixture | Concrete Mix | Application and Product |
| 77850 | Liquid coloring suspension and colored cementitious composition | Concrete works | Product | Product |
| 180718 | A method of making molded concrete parts having smooth surfaces and molded concrete parts made thereof | Concrete Works | Concrete Mix | Application |
| 74688 | Composite Material Including a Plurality of Fibers | Fibers | Product | Product |
| 74848 | Surface-modified polyolefin fibers | Fibers | Product | Product |
| 78893 | Hochtemperaturstabiler, nicht brandweiterleitender, organischer Schaum auf Basis aromatischer Amide für Underground Construction und thermische Isolierung | Foams | Device | Process |
| PAT-0007 | Grout Injecting Device | Injection | Formulation | Product |
| 62437 | Siliceous-Based Polyurea Compositions | Injection | Product | Product |

| Patent family | Title | Product category | Product covered by patent | Patent scope |
|---------------------|---|------------------|-------------------------------|-------------------------|
| 150167 | Device and Method for Determining Rheological Properties of Concrete | Others | Digitalization | System |
| 181589 | Digital Concrete Mixture Optimization | Others | Digitalization | System |
| 181588 | Digital Admixture Customization | Others | Digitalization | System |
| 181586 | Digi Quality Control | Others | Formulation | Application and Product |
| 59776 | Method and Composition for a Tunnel Boring Machine | TBM | Formulation | Product |
| 180287 ¹ | Mitigation of alkali-silica reaction in concrete using readily-soluble chemical additives | Concrete works | N/A (potentially Formulation) | Product |

Transfer of the following Australian registered EBC patents:

- (i) patent family PF78800 (Surface Applied Corrosion Inhibitor); and
- (ii) patent family PF170037 (Two-component coating compositions) (pending).

Transfer of the unregistered EBA patents listed in Confidential Schedule 4A.

(e) Know-how

All formulation data for existing products sold in Australia will be transferred to the Approved Purchaser.

All production process data and related know-how for products currently sold by the Divestiture Business resides with the Divestiture Business management team and will transfer with the Divestiture Business.

The books, records and files relating to the prosecution and maintenance of the intellectual property rights attributable to the Divestiture Business to be transferred to the Approved Purchaser.

5. Inventory

All inventory of the Australian Divestiture Business that exists at the date of completion of the divestment and is not already sold to a third-party customer.

¹ Patent owned by The Regents of the University of California, Yara International ASA, and Construction Research & Technology GmbH (CORTE). The transfer will be of MBCC's interest held via CORTE.

For the avoidance of doubt, all assets used by the Australian Divestiture Business to supply any aftersales services and technical support will also be transferred to the Approved Purchaser.

6. Employees

Employees employed by MBCC Australia including all production staff, sales staff and senior management.

7. Customer contracts

All existing customer contracts, sales orders, purchase orders associated with the Divestiture Business and entered into by MB Solutions Australia Pty Ltd and/or Bluey Technologies Pty Ltd. For the avoidance of doubt, this includes the Material Contracts listed in part 1 of Confidential Schedule 5.

8. Third party supply and distribution contracts

All Material Contracts with third parties for the acquisition of goods or services associated with the Divestiture Business and entered into by MB Solutions Australia Pty Ltd and/or Bluey Technologies Pty Ltd. For the avoidance of doubt, this includes the Material Contracts listed in part 2 of Confidential Schedule 5.

9. Business records

All business records including all customer and vendor records (current and historical), price lists, advertising or marketing materials, financial and legal records, catalogues and mailing lists which are used by the Divestiture Business.

10. Permits and licences

All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a government agency and related documentation and used primarily in relation to, or required for the ownership and operation of, or required to facilitate the operation of, the Divestiture Business.

Confidential Schedule 4A -

Confidential Schedule 5 -

Confidential Schedule 6 -

Confidential Schedule 7 -

Confidential Schedule 8 -

Confidential Schedule 9 -

Confidential Schedule 10 -

Schedule 11 - Approved Purchaser

The Approved Purchaser of the Divestiture Business at the date of this Undertaking is The Seventh Cinven Fund, which is managed by Cinven Capital Management (VII) General Partner Limited, Level 4, Mill Court, La Charroterie, St Peter Port, Guernsey, GY1 1EJ (either directly or through its subsidiaries).