

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Gebr. Knauf KG**

Contents

1. Person giving the Undertaking	1
2. Background	1
3. Commencement of this Undertaking.....	4
4. Cessation of Ongoing Obligations.....	4
5. Divestiture of the Divestiture Interest or Divestiture Assets	4
6. Process for approving a proposed purchaser.....	7
7. Divestiture Interest Protection.....	9
8. Independent Management of the Divestiture Interest	10
9. Independent Audit	14
10. Notification of key dates and ACCC requests for information.....	19
11. Disclosure of this Undertaking	20
12. Obligation to procure	21
13. No Derogation.....	21
14. Change of Control	21
17. Notices.....	22
18. Defined terms and interpretation	23
Schedule 1 – Dictionary and interpretation	28
Schedule 2 – Proposed Purchaser Notice Form.....	34
Schedule 3 – Undertaking Appointment.....	37
Schedule 4A – Divestiture Interest	41
Confidential Schedule 4B - Divestiture Assets.....	42
Confidential Schedule 5 - Initial Sale Period	47
Confidential Schedule 6 - Form of terms of appointment of Independent Manager	48
Confidential Schedule 7	49
Confidential Schedule 8.....	50
Confidential Schedule 9.....	63

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Gebr. Knauf KG (**Knauf**), a German registered company and Knauf Gypsum (Australia) Pty Ltd, Knauf Insulation Pty Ltd and KnaufAMF Australia Pty Ltd.

2. Background

The parties to the proposed acquisition

- 2.1. Knauf is an international manufacturer of gypsum boards, plasters and accessories, ceilings, insulation materials, drylining systems, thermal insulation composite systems, paints, floor screed, floor systems, and construction equipment and tools. Knauf has subsidiaries and business activities worldwide. Its headquarters are in Iphofen, Germany.
- 2.2. In Australia, Knauf is a manufacturer of gypsum boards, fixed suspended ceilings, plaster compound and metal profiles; an importer of modular suspended ceilings, cement boards as well as plaster products and insulation products and a supplier of all of these products (**Knauf Australia**). Knauf has a national distribution network comprising company-owned stores, Plastamasta franchises and independent distributors through which its products are distributed.
- 2.3. USG Corporation is a Delaware Corporation and the ultimate parent of the USG group of companies (the **USG Group**). USG Corporation's shares trade on the New York Stock Exchange and the Chicago Stock Exchange. USG Corporation is headquartered in the United States and is a manufacturer and supplier of plasterboard, ceiling tiles, flooring, roofing and related products.
- 2.4. A subsidiary of USG Corporation, USG Netherlands Global Holdings B.V (**USG B.V.**) holds a 50% share in a joint venture with Boral International Pty Limited and Boral Building Materials Pty Limited (together, **Boral**) holding the other 50% share (**USG Boral JV**).
- 2.5. The USG Boral JV was formed in early 2014 and is governed by a Shareholders Agreement dated 28 February 2014 between USG B.V., Boral, USG Boral Building Products Pte Limited and USG Boral Building Products Pty Limited, Boral Limited and USG Corporation (**Shareholders Agreement**). The USG Boral JV manufactures and supplies gypsum-based wall and ceiling lining systems, modular and fixed suspended ceiling systems, metal framing, plasters, cement board, joint compounds, panels and accessories. It also holds a 50% share in Rondo Building Services Pty Ltd (**Rondo**), which manufactures and supplies metal profiles.
- 2.6. In Australia, the USG Boral JV operates under the Australian-incorporated entity USG Boral Building Products Pty Limited.
- 2.7. USG Corporation's only interest in Australia is its 50% share in the USG Boral JV.

The Proposed Acquisition and AWI Acquisition

- 2.8. On 11 June 2018, Knauf, WorldCup Acquisition Corporation, and USG Corporation entered into an agreement, pursuant to which World Cup Acquisition Corporation would acquire USG Corporation (**Proposed Acquisition**).

- 2.9. Upon completion of the Proposed Acquisition, USG Corporation will continue as the surviving corporation in the merger and an indirect, wholly-owned subsidiary of Knauf.
- 2.10. Completion of the Proposed Acquisition is conditional on regulatory approvals, including clearance from the ACCC.
- 2.11. On 29 August 2018, Boral announced that the signing of the agreement for the Proposed Acquisition constitutes a default under the Shareholders Agreement, which triggered the right for Boral to acquire USG B.V.'s interest in the USG Boral JV. Boral commenced a process under the Shareholders Agreement to establish fair market value of USG B.V.'s interest. The Shareholders Agreement defines fair market value and provides a process for determination, if not agreed. Only when fair market value is agreed or determined, Boral may make a decision whether or not to exercise its call option in relation to USG B.V.'s interest in the USG Boral JV.
- 2.12. If Boral exercises its call option and acquires USG B.V.'s interest in the USG Boral JV, there would no longer be any overlap between Knauf and USG in Australia.
- 2.13. Separately, Knauf proposes to acquire Armstrong World Industries Pty Ltd (**AWI Acquisition**). AWI is a subsidiary of Armstrong World Industries, an international manufacturer and designer of ceilings and walls. In Australia, AWI supplies modular suspended ceilings but does not have any manufacturing facilities.

The ACCC's review

- 2.14. On 19 September 2018, the ACCC commenced its public review of the Proposed Acquisition and the AWI Acquisition.
- 2.15. The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition and AWI Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition and/or the AWI 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 *Competition and Consumer Act 2010* (Cth) (**Act**).

The ACCC's competition concerns

- 2.16. The ACCC was concerned that the Proposed Acquisition would have the effect, or be likely to have the effect, of a substantial lessening of competition for the supply of plasterboard, plaster compounds and treatments, fixed suspended ceilings and metal profiles in Australia; and, when combined with the AWI Acquisition, for the supply of modular suspended ceilings in Australia (**Overlapping Markets**). Within each of the Overlapping Markets, the Proposed Acquisition would result in the removal of a close competitor and provide the merged entity with a significant market share.
- 2.17. In relation to plasterboard and fixed suspended ceilings, the ACCC was concerned that:
 - (a) imports would not provide sufficient constraint on the merged entity, including because plasterboard is fragile and expensive to transport;

- (b) there has been limited entry or expansion since Knauf's entry into Australia, and new suppliers face substantial barriers to entry including to develop a distribution network and establish customer credibility; and
 - (c) the Proposed Acquisition could increase the likelihood of coordinated conduct in a market that may facilitate coordinated effects given the fairly uniform nature of products, the similarity of market shares and market participants, and the repeat interaction by suppliers across a number of product markets.
- 2.18. The ACCC considered similar issues arise in relation to plaster compounds and treatments, notwithstanding some import competition.
- 2.19. While the parties would have a smaller combined market share for metal profiles, the ACCC was concerned that the USG Boral JV holds a 50% interest in Rondo, the largest supplier of metal profiles, and the next closest competitor has significantly smaller market share.
- 2.20. In relation to modular suspended ceilings, AWI and the USG Boral JV are the market leaders and close competitors, with new entrants achieving relatively minor market shares. While modular suspended ceilings are primarily imported by suppliers, the ACCC was concerned that it would not be feasible for customers to directly import because of issues regarding product quality and reliability.
- 2.21. The ACCC considered that the AWI Acquisition is unlikely to result in a substantial lessening of competition absent the Proposed Acquisition, because Knauf is a relatively minor supplier of modular suspended ceilings.

The Undertaking remedy

- 2.22. Knauf does not consider that the Proposed Acquisition would have the effect or be likely to have the effect of a substantial lessening of competition in any market. However, to address the ACCC's competition concerns referred to in clauses 2.16 to 2.21 above, Knauf has offered this Undertaking pursuant to section 87B of the Act.
- 2.23. The objective of this Undertaking is to address the ACCC's competition concerns as set out above that may otherwise arise as a consequence of the Proposed Acquisition and the AWI Acquisition. The Undertaking aims to achieve this objective by placing obligations on Knauf to:
- (a) ensure that:
 - (i) the Divestiture Interest is sold to an Approved Purchaser, thereby removing the competitive overlap between Knauf and the USG Boral JV; or
 - (ii) the Divestiture Assets are sold to an Approved Purchaser;
 - (b) create or strengthen a viable, effective, stand-alone, independent and long term competitor in the Overlapping Markets;
 - (c) ensure the purchaser of the Divestiture Interest or the Divestiture Assets (as applicable) has all the necessary associated assets and rights to compete effectively with Knauf in the Overlapping Markets;

- (d) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Interest and the Divestiture Assets prior to divestiture; and
- (e) provide for the effective oversight of Knauf's compliance with this Undertaking.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by Knauf and Knauf Gypsum (Australia) Pty Ltd, Knauf Insulation Pty Ltd and KnaufAMF Pty Ltd; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

4.1. Knauf 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, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

4.4. 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, Schedule 4A, and Confidential Schedules 4B, 5, 6, 7, 8 and 9.

5. Divestiture of the Divestiture Interest or Divestiture Assets

Divestiture

5.1. Unless Confidential Schedule 8 applies, Knauf must:

- (a) in accordance with this Undertaking, divest, or cause the divestiture of the Divestiture Interest, in accordance with the processes described in clause 1 of Confidential Schedule 7, and only to an Approved Purchaser.
- (b) divest, or cause the divestiture of, the Divestiture Interest by:

- (i) the sale and transfer of the shares set out in Part 1 of Schedule 4A to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period;
 - (ii) the transfer or grant to the Approved Purchaser of any Consents pursuant to clauses 5.3 to 5.4;
 - (iii) the assignment, transfer or licence to the Approved Purchaser of the assets set out in Confidential Part Two of Schedule 4A; and
 - (iv) the granting of rights and the entering into supply agreements, or consenting to the granting of rights and entering into supply agreements set out in Confidential Part Two of Schedule 4A.
- 5.2. In the event that Confidential Schedule 8 applies, Knauf must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Assets only to an Approved Purchaser, by:
- (a) the sale, assignment, transfer and/or licence of all of the assets set out in Confidential Schedule 4B to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement;
 - (b) the transfer or grant to the Approved Purchaser of any Consents pursuant to clauses 5.3 to 5.4;
 - (c) the transfer of any Transferred Personnel required pursuant to clauses 5.6 to 5.7;
 - (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.8 to 5.10 and Confidential Schedule 9; and
 - (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.11 to 5.13 and Confidential Schedule 9.

Consents

- 5.3. Knauf 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 Divestiture Interest or Divestiture Assets (as applicable);
 - (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; and
 - (d) promptly pay the costs and expenses of any third party reasonably incurred by Knauf in providing the Consents.
- 5.4. If, seven Business Days before completion of the divestiture of the Divestiture Interest or Divestiture Assets (as applicable), the Approved Purchaser fails to obtain or is unable to obtain one or more Consents, then Knauf 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 5.3 as soon as possible after the completion of the divestiture of the Divestiture Interest or Divestiture Assets (as applicable) (and until such time as clause 5.3 is satisfied).

5.5. Even if Knauf has complied with clause 5.3 to 5.4, it remains a breach of this Undertaking if Knauf is unable to effect the divestiture of the Divestiture Interest or Divestiture Assets (as applicable) by reason of a failure to obtain Consents.

Transferred Personnel

5.6. If applicable, at the option of the Approved Purchaser, Knauf must transfer (or in the case of the Divestiture Interest, grant its consent to 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 Divestiture Interest or the Divestiture Assets (as the case may be) and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

5.7. When fulfilling its obligations under clause 5.6, Knauf must:

- (a) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Divestiture Interest or the Divestiture Assets (as the case may be);
- (b) effective on the date of the divestiture of the Divestiture Interest or the Divestiture Assets (as the case may be), release the Transferred Personnel from any obligations to provide services to Knauf;
- (c) effective on the date of the divestiture of the Divestiture Interest or the Divestiture Assets (as the case may be), 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 Interest or the Divestiture Assets (as the case may be); and
- (d) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Knauf for a period of six months after the completion of the divestiture of the Divestiture Interest or the Divestiture Assets (as the case may be).

Technical Assistance

- 5.8. If applicable, at the option of the Approved Purchaser, Knauf must supply (or in the case of the Divestiture Interest, grant its consent to 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 Divestiture Interest or the Divestiture Assets (as the case may be).
- 5.9. Knauf 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) on terms that comply with Confidential Schedule 9.
- 5.10. To avoid doubt, Knauf 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 5.8 and 5.9.

Transitional Supply Agreements

- 5.11. If applicable, at the option of the Approved Purchaser, Knauf must ensure the continued supply by Knauf (or in the case of the Divestiture Interest, grant its consent to continued supply) 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 Overlapping Markets.
- 5.12. Knauf 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 of the included goods and services on terms that comply with Confidential Schedule 9; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.13. To avoid doubt, Knauf 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 5.11 and 5.12.

6. Process for approving a proposed purchaser

Provision of a notice for a Proposed Purchaser for the Divestiture Interest or the Divestiture Asset

- 6.1. To seek ACCC approval for a Proposed Purchaser for the Divestiture Interest or the Divestiture Asset, Knauf 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, and in the case of the Divestiture Assets, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).

Purchaser approved for the Divestiture Interest at the time the Undertaking was accepted

- 6.2. At the time this Undertaking was accepted, the ACCC considered information of the type required in a Proposed Purchaser Notice and approved Boral International Pty Limited and Boral Building Materials Pty Limited or its Related Bodies Corporate (**Boral**) as the Approved Purchaser of the Divestiture Interest, subject to ACCC approval of any sale and purchase agreement, transitional technical assistance agreement and transitional supply agreement proposed to be entered into with Boral in respect of its acquisition of the Divestiture Interest.

Approval of a Proposed Purchaser after the Commencement Date

- 6.3. Knauf must provide the ACCC with a Proposed Purchaser Notice for the Divestiture Assets at least 20 Business Days prior to the end of the Initial Sale Period.
- 6.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:
- (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 5.8 and 5.9; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.11 and 5.12.
- 6.5. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.4, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase 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 Knauf;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Interest or the Divestiture Assets (as applicable) as a going concern;

- (f) Proposed Purchaser is able to conduct the Divestiture Interest or the Divestiture Assets (as applicable) effectively; and
 - (g) divestiture of the Divestiture Interest or the Divestiture Assets (as applicable) 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 USG Boral JV or the Divestiture Assets, as the case may be, under the ownership of the Proposed Purchaser.
- 6.6. 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 Interest Protection

Protection of the Divestiture Interest

- 7.1. From the Control Date, Knauf must not sell or transfer the Divestiture Interest or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as required to allow completion of the Proposed Acquisition.

Knauf's obligations in relation to the Divestiture Interest prior to completion of divestiture

- 7.2. Without limiting this clause 7, Knauf must, from the Control Date until completion of the divestiture of the Divestiture Interest:
- (a) take all steps available to it to:
 - (i) ensure that the Divestiture Interest is managed and operated in the ordinary course of the USG Boral JV 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 Interest at the Control Date;
 - (ii) ensure that the Divestiture Interest has access to funds and credit to fulfil its obligations in connection with the working capital and credit for the Divestiture Interest in a manner which is consistent with the financing of the Divestiture Interest before the Control Date;
 - (iii) procure continued administrative and technical support by the Divestiture Interest for the USG Boral JV in a manner consistent with that before the Control Date and in accordance with any plans established before the Control Date;
 - (b) take no steps, by reason of Knauf's interest in the Divestiture Interest to prevent, hinder or interfere with:
 - (i) agreements relating to the USG Boral JV with customers, suppliers and/or other third parties that are in place at the Control Date;
 - (ii) renewal or replacement upon expiry of Material Contracts for the provision of goods or services to the USG Boral JV on commercial terms favourable to the Divestiture Interest;

- (iii) the maintenance of supply of goods and services that are part of the business of USG Boral JV to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
- (iv) the maintenance of the standard of manufacture, distribution, promotion and sale of those products which form part of the business of the USG Boral JV as at the Control Date; and
- (v) the promotion and marketing of the products which form part of the business of USG Boral JV in accordance with any plans established before the Control Date.

Personnel of USG Boral JV

- 7.3. From the Control Date until completion of the divestiture of the Divestiture Interest, Knauf will not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the USG Boral JV as at the Control Date to any other business operated by Knauf.
- 7.4. As soon as practicable after the Commencement Date, Knauf must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Knauf's obligations under this Undertaking.

Confidential Information

- 7.5. Subject to clause 7.6, Knauf must not, at any time from the Commencement Date, use or disclose any confidential information about the USG Boral JV gained through:
 - (a) ownership and/or management of the Divestiture Interest; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.6. Clause 7.5 does not apply to information that Knauf 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 Knauf who need to know the information to carry out the permitted purpose.

8. Independent Management of the Divestiture Interest

Obligation to appoint an Approved Independent Manager

- 8.1. Knauf must procure the appointment of and maintain an Approved Independent Manager to oversee the Divestiture Interest, from the Control Date until the completion of the divestiture of the Divestiture Interest in accordance with this Undertaking.

Process for approving a Proposed Independent Manager

- 8.2. At least 15 Business Days before the Control Date, Knauf must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan. The draft terms of appointment of the Proposed Independent Manager may take the form described in Confidential Schedule 6.
- 8.3. If clauses 8.12, 8.13 or 8.14 apply, Knauf must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Interest;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Knauf;
 - (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 Independent Manager

- 8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, Knauf must by the Control Date:
 - (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 8.7. If the Approved Independent Manager has not been appointed:
 - (a) by the Control Date;
 - (b) within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or

- (c) if the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.3;

then clause 8.8 applies.

8.8. If clause 8.7 applies, the ACCC at its discretion may:

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

Obligations and powers of the Approved Independent Manager

8.9. Knauf must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:

- (a) maintain his or her independence from Knauf, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Knauf for the period of his or her appointment;
- (b) act in the best interests of the Divestiture Interest at all times including ensuring that the Divestiture Interest 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 Interest at the Control Date;
- (c) not use any confidential information gained through the management of the Divestiture Interest other than for performing his or her functions as Approved Independent Manager;
- (d) make only those Material Changes to the Divestiture Interest which have been approved by the ACCC;
- (e) oversee the Divestiture Interest to the maximum extent practicable, in a manner which is financially and operationally separate from Knauf;
- (f) co-operate with the requests of any Approved Independent Auditor appointed pursuant to this Undertaking.
- (g) provide the following reports directly to the ACCC:
 - (i) a monthly written report 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 Knauf'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 Approved Independent Manager pursuant to this Undertaking.
- 8.10. Knauf must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (a) oversee the Divestiture Interest according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Interest;
 - (b) provide any information requested by Knauf 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 Interest requested by Knauf which is not covered by the protocol in the Approved Separation and Management Plan;
 - (d) make decisions on behalf of Knauf to the extent required to renew or replace upon expiry Material Contracts for the provision of goods or services to the USG Boral JV on commercial terms favourable to the USG Boral JV;
 - (e) engage, redeploy or make redundant personnel employed in the Divestiture Interest as the Approved Independent Manager determines necessary; and
 - (f) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

Knauf's obligations in relation to the Approved Independent Manager

- 8.11. Without limiting its obligations in this Undertaking, Knauf must:
- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
 - (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
 - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Interest; and

- (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
- (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Interest, and for the Divestiture Interest to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing consent to access to the facilities, sites or operations of the Divestiture Interest required by the Approved Independent Manager;
 - (iii) procuring, to the extent available, access to any information or documents that the Approved Independent Manager considers necessary for overseeing the Divestiture Interest or for reporting to or otherwise advising the ACCC; and
 - (iv) not requesting information or reports regarding the Divestiture Interest from the personnel of the Divestiture Interest except through the Approved Independent Manager; and
 - (v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

Resignation, revocation or termination of the Approved Independent Manager

- 8.12. Knauf must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Divestiture Interest.
- 8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.14. The ACCC may approve any proposal by, or alternatively may direct, Knauf to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager 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. Knauf must appoint and maintain an Approved Independent Auditor to audit and report upon Knauf's compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 9.2. At least 15 Business Days before the Control Date, Knauf 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. If clauses 9.16, 9.17 or 9.18 apply, Knauf must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.8 applies.
- 9.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.5. 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 Knauf;
 - (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

- 9.6. 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, Knauf 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

- 9.7. If the Approved Independent Auditor has not been appointed:
 - (a) by the Control Date;
 - (b) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.16, 9.17, or 9.18; or
 - (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.3;then clause 9.8 applies.

9.8. If clause 9.7 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 Knauf to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

9.9. Knauf 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 Knauf, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Knauf for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 9.11; and
 - (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
- (d) 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.

9.10. Knauf 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 business relating to the Divestiture Interest (subject to consent of the relevant USG Boral JV entities and Boral consent) and the Divestiture Assets (as applicable) and Knauf'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

9.11. 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 Knauf'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) Knauf's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Knauf's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.12. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Knauf at the following times:
- (a) within 10 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 Interest or Divestiture Assets (as applicable) is completed;
 - (c) every six months after the date of provision of the last Audit Report pursuant to clause 9.12(b), until the ACCC confirms in writing to Knauf that it is satisfied that Knauf has fulfilled its obligations pursuant to this Undertaking; and
 - (d) a final report due three months after the last report provided pursuant to clause 9.12(c).
- 9.13. Knauf 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.

- 9.14. Knauf 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).

Knauf's obligations in relation to the Approved Independent Auditor

9.15. Without limiting its obligations in this Undertaking, Knauf 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 Knauf personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access (or consent to access in the case of the Divestiture Interest) to the facilities, sites or operations of the Divestiture Interest or Divestiture Assets (as applicable) and Knauf's other businesses as required by the Approved Independent Auditor;
 - (iii) taking all steps necessary to procure 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;
 - (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

- 9.16. Knauf must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.17. 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.
- 9.18. The ACCC may approve any proposal by, or alternatively may direct, Knauf 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 or the Approved Terms of Appointment.

10. Notification of key dates and ACCC requests for information

- 10.1. Knauf 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 Interest or Divestiture Asset, as the case may be, 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 Interest or divestiture of the Divestiture Asset, as the case may be, within one Business Day of that date.
- 10.2. The ACCC may direct Knauf in respect of its compliance with this Undertaking to, and Knauf 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 Knauf'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.
- 10.3. Any direction made by the ACCC under clause 10.2 will be notified to Knauf, in accordance with clause 17.2.
- 10.4. In respect of Knauf'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.
- 10.5. Knauf will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 10.4.
- 10.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 10 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 10.7. The ACCC may in its discretion to be exercised in good faith:
 - (a) advise any Undertaking Appointment of any request made by it under this clause 10; 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 10.
- 10.8. Nothing in this clause 10 requires the provision of information or documents in respect of which Knauf has a claim of legal professional or other privilege.

11. Disclosure of this Undertaking

- 11.1. Knauf and the ACCC agree that Confidential Part Two of Schedule 4A, and Confidential Schedules 4B, 5, 6, 7.8 and 9 will remain confidential until after the completion of the divestiture of the Divestiture Interest or Divestiture Assets, as the case may be.
- 11.2. Knauf acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of part 2 of Schedule 4A, and Confidential Schedules 4B, 5, 6, 7, 8 and 9.
- 11.3. Knauf acknowledges that the ACCC may, subject to clause 11.1:
 - (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.
- 11.4. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 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.
- 11.5. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

12. Obligation to procure

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

13. No Derogation

- 13.1. 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 Knauf of any term of this Undertaking.
- 13.2. 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 Knauf 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.

14. Change of Control

- 14.1. In the event that a Change of Control is reasonably expected to occur, Knauf 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 Knauf pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Knauf in writing that a section 87B undertaking under this clause is not required.

15. Costs

- 15.1. Knauf must pay all of its own costs incurred in relation to this Undertaking.

16. Jurisdiction

- 16.1. Knauf irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.

16.2. Unless and until notified in writing by Knauf to the ACCC of the appointment of another person as agent within Australia, Knauf appoints the person, with particulars as set out in this clause 16, as its agent for the purposes of any service of process in relation to this Undertaking.

16.3. Knauf appoints the following person for the purpose of this clause 16:

Name: Kirsten Webb
Address: Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000 Australia
Email Address: kwebb@claytonutz.com
Fax number: +612 8220 6700
Attention: Kirsten Webb, Partner

17. Notices

Giving Notices

17.1. 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 and Authorisation Review Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

17.2. Any notice or communication to Knauf pursuant to this Undertaking must be sent to:

Name: Jörg Schanow
Address: Gebr. Knauf KG, Am Bahnhof 7, 97346 Iphofen, Germany
Email Address: Schanow.Joerg@knauf.de
Fax number: +49 9323 31-470
Attention: Jörg Schanow, General Counsel

With a copy sent to:

Name: Kirsten Webb

Address: Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000
Australia

Email Address: kwebb@claytonutz.com

Fax number: +612 8220 6700

Attention: Kirsten Webb, Partner

- 17.3. 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).
- 17.4. 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

- 17.5. Knauf must notify the ACCC of a change to its contact details within three Business Days.
- 17.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 17.3 and 17.4, will be taken to be received.

18. Defined terms and interpretation

Definitions in the Dictionary and the Confidential Dictionary

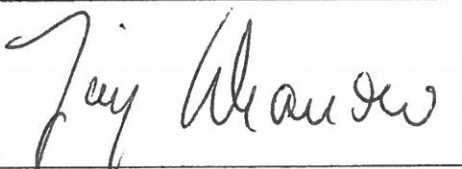
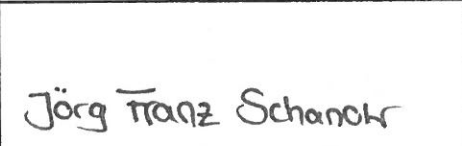
- 18.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to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

Interpretation


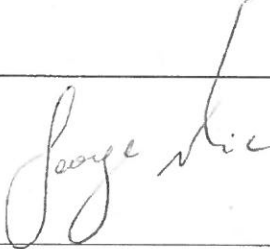
- 18.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

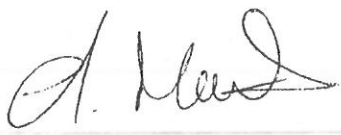

Executed by Gebr. Knauf KG by its authorised signatory:

		
Signature of authorised signatory		
		
Name of authorised signatory (print)		
Date 25 March 2019		

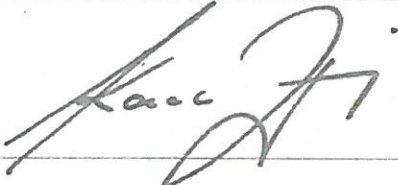

Executed by Knauf Gypsum (Australia) Pty Ltd (ACN 134 378 313) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of director / company secretary
GAVIN HOWARD BURTON	GEORGE MAMIC
Name of director (print)	Name of director / company secretary (print)
Date 26/03/2019	Date 26/03/19

Executed by **Knauf Insulation Pty Ltd** (ACN 129 827 336) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of director / company secretary
Andreas Moutsatsos	STUART DUNBAR
Name of director (print)	Name of director / company secretary (print)
Date 26.03.2019	Date 26/MARCH/2019

Executed by KnaufAMF Australia Pty Ltd (ACN 141 525 457) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of director / company secretary
KARL WENIG	SVEN FLEISCHMANN
Name of director (print)	Name of director / company secretary (print)
25. March 2019	26. MAR 2019
Date	Date

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

28 March 2019

Date

and signed on behalf of the Commission:



Acting Chair

28 March 2019.

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

- **Knauf** means the entity referred to in clause 1.1 of this Undertaking.
- **USG Corporation** is a reference to the target USG Corporation, a Delaware Corporation and the ultimate parent of the USG Group of companies as described in clause 2.3 above.
- **Boral** means Boral International Pty Limited (ACN 000 341 239) and Boral Building Materials Pty Limited (ACN 090 736 888) and its Related Bodies Corporate.

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

Approved Independent Manager means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

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 Knauf will procure the divestment of the Divestiture Interest or the Divestiture Assets (as the case may be) to the Approved Purchaser, and Approved Purchaser will acquire the Divestiture Interest from USG B.V. or the Divestiture Assets from Knauf (as applicable).

Approved Separation and Management Plan means the plan or document as the case may be, approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- a) oversee the Divestiture Interest separately from any business to be retained by Knauf; and
- b) oversee the separate management and operation of the Divestiture Interest independently of Knauf and any retained business.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Manager or Approved Independent Auditor, as applicable, 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 Knauf 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 Knauf 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 9.11 of this Undertaking.

AWI Acquisition has the meaning given to it in clause 2.13 of this Undertaking.

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 Knauf 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 Knauf to continue to comply with this Undertaking in its entirety.

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

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

Consents means any Government Consents or Third Party Consents.

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

Dictionary means this dictionary in this Part 1 of Schedule 1.

Divestiture Assets means the assets described in Confidential Schedule 4B to this Undertaking.

Divestiture Interest means the items described in Schedule 4A to this Undertaking.

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

Establishment Audit has the meaning given to it in clause 9.12(a) of this Undertaking.

Government Consents means any consents from any Australian Commonwealth, Australian State or Australian Territory 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 Interest or Divestment Assets (as the case may be).

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

Knauf Australia has the meaning given to it in clause 2.2 of this Undertaking.

Initial Sale Period is defined in clause 1 of Confidential Schedule 5 to this Undertaking.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Interest.

Material Contract means any Agreement that is necessary for the operation of the business associated with the Divestiture Interest.

Overlapping Markets has the meaning given to it in clause 2.16 of this Undertaking.

Proposed Acquisition is defined in clause 2.8 of this Undertaking.

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

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

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

Proposed Independent Manager Notice has the meaning given to it in clause 8.2 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 6.1 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.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Rondo has the meaning given to it in clause 2.5 of this Undertaking.

Shareholders Agreement has the meaning given to it in clause 2.5 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 Interest or the Divestiture Assets (as the case may be), 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 Divestiture Interest or Divestment Assets (as the case may be).

Transferred Personnel has the meaning given to it in clause 5.6 of 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 or the Approved Independent Auditor, as applicable.

USG Boral JV is a reference to the incorporated joint venture between Boral, USG B.V., USG Boral Building Products Pte Limited and USG Boral Building Products Pty Limited, Boral Limited and USG Corporation.

USG B.V. has the meaning given to it in clause 2.4 of this Undertaking.

USG Group has the meaning given to it in clause 2.3 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, Knauf 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

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

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@accc.gov.au

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@accc.gov.au

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch,
Merger and Authorisation Review Division

1) In relation to the Proposed Purchaser, please provide the following information:

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

2) Please attach a submission containing the following information to this form:

- (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 directors (delete any that do not apply)] of the Proposed Purchaser;
- (d) details of any of the following types of relationships between Knauf and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Knauf and the Proposed Purchaser are Associated Entities;
 - (ii) Knauf is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Knauf;

- (iv) Knauf and the Proposed Purchaser are Related Entities;
 - (v) Knauf and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Knauf is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Knauf 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 Knauf or has been in the past three years;
 - (ix) Knauf is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Knauf 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 Knauf:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) whether the Proposed Purchaser is of good financial standing;
 - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Interest or the Divestiture Asset as a going concern;
 - (v) whether the Proposed Purchaser is able to conduct the Divestiture Interest or the Divestiture Asset effectively;
 - (vi) whether the divestiture of the Divestiture Interest or the Divestiture Asset 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 Interest or the Divestiture Asset under the ownership of the Proposed Purchaser; and
 - (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Interest or the Divestiture Asset, such as outstanding legal action or disputes.

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 Knauf pursuant to this form.

Schedule 3 – Undertaking Appointment

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

- Independent Manager; or
- Independent Auditor

(the **Undertaking Appointments**).

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.

1.1 Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line "*Proposed Independent Auditor/Independent Manager Form – Knauf s87B Undertaking*" to the below email addresses:

- 1) mergers@acc.gov.au

Attention: Executive General Manager
Merger and Authorisation Review Division

- 2) **With a copy sent to:**

mergersru@acc.gov.au

Attention: Director
Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a proposed Independent Auditor or Independent Manager (i.e. the relevant Undertaking Appointment).

- 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:
 - address;

- contact name;
- telephone number; and
- other contact details.

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 directors (delete any that do not apply)] of [the Undertaking Appointment's employer];
- (c) details of any of the following types of relationships between [Company] 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) Knauf and [the Undertaking Appointment's employer] are Associated Entities;
 - (ii) Knauf is an Entity Connected with [the Undertaking Appointment's employer];
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with Knauf;
 - (iv) Knauf and [the Undertaking Appointment's employer] are Related Entities;
 - (v) Knauf and [the Undertaking Appointment's employer] are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Knauf is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment];
 - (vii) Knauf 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 Knauf or has been in the past three years;
 - (ix) Knauf is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years;
 - (x) any other relationship between Knauf and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other; and
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC.

- 3) A document outlining the terms of appointment for the proposed Undertaking Appointment.

1.2 Specific Information required for Undertaking Appointments

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

Proposed Independent Auditor

- 1) A finalised draft audit plan, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

Proposed Independent Manager

- 1) The finalised draft separation and management plan for the Divestiture Interest or Divestiture Asset (as applicable) detailing the measures and timing to be implemented by Knauf and the Approved Independent Manager in order to fulfil Knauf's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with Knauf to achieve the objectives of the Undertaking including:
 - (a) the intended mode of operation of the Divestiture Interest or Divestiture Assets (as applicable) until completion of its divestiture;
 - (b) separation measures to ensure the Divestiture Interest or Divestiture Assets (as applicable) is operated in a manner which is financially and operationally separate from Knauf, including the:
 - (i) separation of the books and records of the Divestiture Interest or Divestiture Asset (as applicable) from those of Knauf;
 - (ii) severance of the Divestiture Interest's or Divestiture Assets' (as applicable) participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Interest or Divestiture Assets (as applicable);
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Interest or Divestiture Assets (as applicable); and
 - (iv) severance of arrangements to share personnel and plant between the Divestiture Interest or Divestiture Assets (as applicable) and any businesses to be retained by Knauf, to the extent possible without compromising the viability of the Divestiture Interest or Divestiture Assets (as applicable);
 - (c) details of contracts for the provision of goods or services to the Divestiture Assets which will expire after the completion of the divestiture of the Divestiture Assets 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 Assets;

- (d) personnel planning to maintain appropriate personnel levels and ensure that the business of the Divestiture Assets has access to all personnel necessary to operate the Divestiture Assets;
- (e) any Material Changes to the Divestiture Assets required in order to fulfil Knauf's and the Approved Independent Manager's obligations pursuant to the Undertaking;
- (f) the cooperation required from the Independent Manager with Knauf in relation to the divestiture of the Divestiture Interest or Divestiture Assets (as applicable), including:
 - (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Divestiture Interest or Divestiture Assets (as applicable), having regard to the nature of the Divestiture Interest or Divestiture Assets (as applicable) (including the extent to which it 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 Interest or Divestiture Assets (as applicable) will be managed;
 - (iii) the method by which the Independent Manager and Knauf will preserve the confidentiality of the Divestiture Interests' or Divestiture Assets' (as applicable) competitively sensitive information from Knauf and its advisers throughout this process; and
 - (iv) a protocol whereby the Approved Independent Manager can provide any information requested by Knauf without disclosing the details of the Divestiture Interests' or Divestiture Assets' (as applicable) competitively sensitive information to Knauf.

Schedule 4A – Divestiture Interest

Part One

1. In accordance with this Undertaking, Knauf must divest or cause the divestiture of the Divestiture Interest being:
 - (a) USG B.V.'s 50% interest in USG Boral Building Products Pty Limited (ACN 004 231 976), which is, at the date of this Undertaking, 511,472,001 ordinary shares (class ORD2) in USG Boral Building Products Pty Limited.

Confidential Part Two

Confidential Schedule 4B - Divestiture Assets

Confidential Schedule 5 - Initial Sale Period

**Confidential Schedule 6 - Form of terms of appointment of
Independent Manager**

Confidential Schedule 7

Confidential Schedule 8

Confidential Schedule 9
