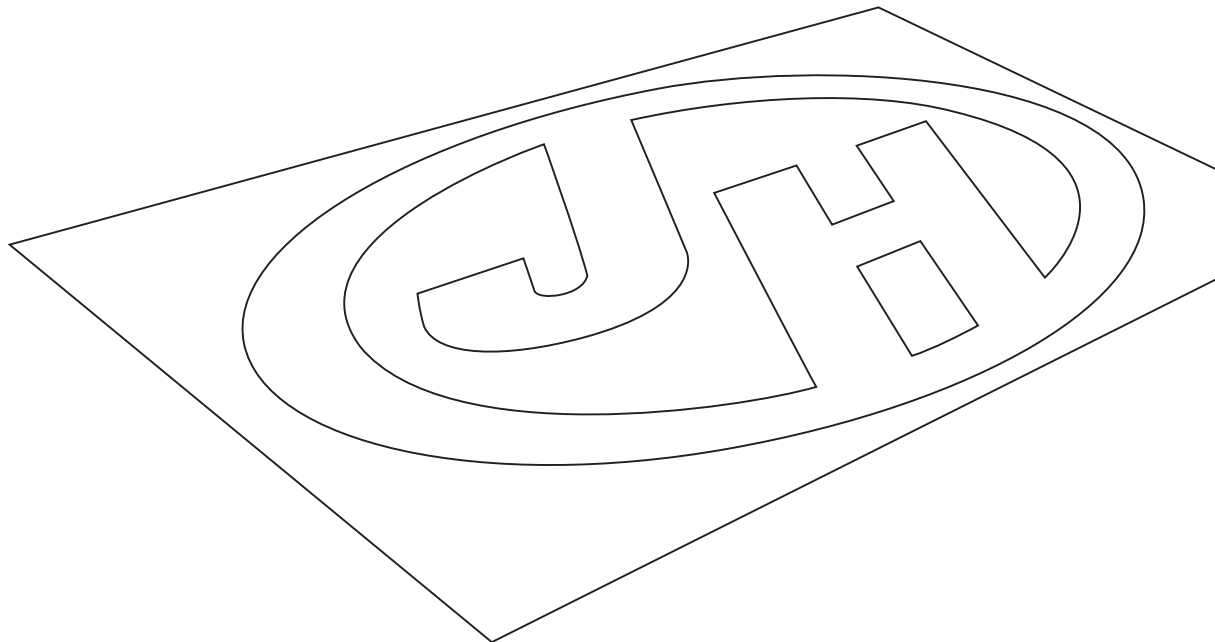


Part C 

# Implementation Deed



# Implementation Deed

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<b>Date</b>	20 August 2001
<b>Parties</b>	<p><b>James Hardie Industries N.V.</b> (ARBN 097 829 895) of Strawinskylaan 1725, 1077 XX Amsterdam, The Netherlands, a limited liability company incorporated under the laws of The Netherlands with its corporate seat in Amsterdam, The Netherlands, (<i>JHI NV</i>); and</p> <p><b>James Hardie Industries Limited</b> (ABN 60 000 009 263) of 8<sup>th</sup> Floor, James Hardie House, 65 York Street, Sydney NSW 2000, Australia (<i>JHIL</i>).</p>
<b>Recitals</b>	<p>JHIL has decided to implement a restructuring by means of a scheme of arrangement under Part 5.1 of the Corporations Act 2001 between JHIL and its members together with a subsequent transfer of JHNV shares, a capital reduction and an issue of partly paid shares by JHIL.</p> <p>JHIL has requested that JHI NV participate in the scheme referred to in Recital A on the basis that the reconstruction in the best interests of JHIL and its members.</p> <p>JHIL and JHI NV have agreed in good faith to implement the scheme and to carry out the transfer of JHNV shares, capital reduction and issue of the partly paid shares upon and subject to the terms and conditions of this Deed.</p>

**IT IS AGREED** as follows.

## 1. Definitions and interpretation

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### 1.1 Definitions

In this Deed, unless the context otherwise requires, words and expressions defined in the Scheme have the same meaning in this Deed save that the following words and expressions shall have meanings as follows:

**Capital Reduction** means the equal capital reduction of JHIL, involving the return of A\$1.72 per JHIL Share held by JHI NV, to be effected on the Capital Reduction Date in accordance with Division 1 of Part 2J.1 of the Corporations Act 2001.

**Capital Reduction Date** means the date on which the Capital Reduction becomes effective, being the date on which a resolution approving the reduction pursuant to section 256C(1) of the Corporations Act 2001 is passed, subject to clause 5.2.

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# Implementation Deed

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**Capital Reduction Resolution** means the resolution set out in clause 5.1(a).

**Deed** means this Implementation Deed.

**Dividend** means the dividend to be declared and paid by JHIL in accordance with clause 5.1(c) in an amount equal to the Dividend Amount.

**Dividend Amount** means an amount equal to the retained earnings of JHIL immediately prior to the payment of the Dividend.

**JHIL ADR Holders** means persons registered as the holder of JHIL ADRs from time to time in the register of JHIL ADRs kept by the Depository.

**JHIL's Constitution** means the constitution of JHIL in force from time to time.

**JHNV** means James Hardie N.V. of Strawinskylaan 1725, 1077 XX Amsterdam, The Netherlands, a limited liability company incorporated under the laws of The Netherlands with its corporate seat in Amsterdam, The Netherlands.

**JHNV Sale Agreement** means the agreement of the same name set out in Annexure 1 to be entered into between JHI NV and JHIL for the transfer of the JHNV Shares to JHI NV.

**JHNV Shares** means the 32,000 common (or ordinary) shares in the capital of JHNV, being all of the issued shares in JHNV.

**Partly Paid Shares** means 100,000 partly paid shares in JHIL, to be issued to JHI NV after effecting the Capital Reduction, in accordance with clause 6 and on the terms set out in Annexure 2.

**Prescribed Foreign ADR Holders** means JHIL ADR Holders:

- (a) whose address as shown in the register of JHIL ADRs held by the Depository is a place outside the Permitted Jurisdictions, unless JHI NV is satisfied before the Implementation Date that such person lawfully can be issued JHI NV ADRs pursuant to the Scheme under the laws of the place of such address; or
- (b) (in the case of corporate entities) whose name, as shown in the books of the Depository, indicates that they are incorporated in The Netherlands.

**Proposal** means:

- (a) the proposed acquisition of all of the issued shares in the capital of JHIL by JHI NV through the implementation of the Scheme;
- (b) the subsequent transfer of JHNV Shares to JHI NV and the effecting of the Dividend and the Capital Reduction; and
- (c) the issue of the Partly Paid Shares in accordance with the terms of this Deed.

**Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act 2001 between JHIL and the Scheme Participants as described in clause 3.

## 1.2 Interpretation and Business Day

Clauses 1.2 and 1.3 of the Scheme shall apply to this Deed as if set out in full.

# Implementation Deed

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## 2. Agreement to proceed with the Proposal

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### 2.1 Conditions Precedent

The obligations of the parties under this Deed (other than under clauses 2.2(a) and 3.1) are subject to the satisfaction of the conditions precedent in clause 3.1 of the Scheme in accordance with its terms.

### 2.2 Proposal

The parties agree to:

- (a) proceed with the Proposal upon and subject to the terms and conditions of this Deed;
- (b) use their best endeavours to procure that the conditions precedent in clause 3.1 of the Scheme are satisfied; and
- (c) do all things and execute all documents which may be necessary, incidental or expedient to implement the Scheme.

## 3. Scheme Steps

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### 3.1 Scheme

JHIL agrees to propose a scheme of arrangement under which all of the JHIL Shares held by Scheme Participants will be transferred to JHI NV and the Scheme Participants will be entitled to receive the Scheme Consideration from JHI NV on the terms and subject to the conditions of the Scheme.

### 3.2 Scheme Consideration

JHI NV covenants in favour of JHIL that in consideration for the transfer to JHI NV of each JHIL Share held by a Scheme Participant under the terms of the Scheme, JHI NV will comply with the terms of clauses 4.2 and 4.3 of the Scheme.

### 3.3 JHI NV Scheme Implementation Obligations

JHI NV covenants with JHIL that it will procure the Depositary to:

- (a) issue to all holders of JHIL ADSs as at the Implementation Date, other than Prescribed Foreign ADR Holders, JHI NV ADSs on the basis of two (2) JHI NV ADSs in exchange for every five (5) JHIL ADSs held by JHIL ADS holders upon surrender of JHIL ADSs to the Depositary;
  - (b) sell any interests in JHI NV CUFSS which would otherwise be acquired by a holder of JHI NV ADSs pursuant to the exchange of ADSs referred to in clause 3.3(a), and which would require the Depositary to issue fractional JHI NV ADSs, and to distribute the net proceeds in US dollars to the relevant holder of JHIL ADSs upon surrender of JHIL ADSs to the Depositary; and
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## Implementation Deed

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- (c) account to each Prescribed Foreign ADR Holder for its portion of the proceeds received from the Nominee from the sale of the JHI NV CUFS referred to in clause 3.4(b).

### 3.4 Sale of Prescribed Foreign Holdings

JHI NV shall procure the Nominee to sell the JHI NV Shares in the form of JHI NV CUFS issued to it under the Scheme in the ordinary course of trading on the ASX and:

- (a) in respect of JHI NV CUFS issued to the Nominee in respect of Prescribed Foreign Shareholders, shall account to each Prescribed Foreign Shareholder for its portion of the proceeds of sale received from the Nominee; and
- (b) in respect of JHI NV CUFS issued to the Nominee in respect of Prescribed Foreign ADR Holders, being that number of JHI NV CUFS underlying the JHI NV ADSs which would otherwise be issued to Prescribed Foreign ADR Holders on implementation of the Scheme, shall account to the Depositary for the proceeds from the sale of those JHI NV CUFS received from the Nominee.

## 4. Transfer of JHNV Shares

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JHIL and JHI NV each undertake to execute the JHNV Sale Agreement on the Implementation Date and to comply with their respective obligations thereunder. JHIL and JHI NV acknowledge that JHIL's obligation to sell the JHNV Shares and JHI NV's obligation to purchase the JHNV Shares arises under the JHNV Sale Agreement and not under this Implementation Deed.

## 5. Capital Reduction and Dividend

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### 5.1 JHIL's Obligations

- (a) JHIL shall, immediately following the entry into the JHIL Register of the name of JHI NV as the sole shareholder of JHIL and the transfer of the JHNV Shares to JHI NV pursuant to clause 4 and the JHNV Sale Agreement, send to JHI NV, as the then sole shareholder of JHIL, a notice of meeting to be held on the date set out in the notice (even if it is not a Business Day), a form of consent to short notice and any other prescribed information in respect of the Capital Reduction. The notice of meeting shall include the following resolution:

"That the issued capital of the Company be reduced without the cancellation of any shares by the payment of an amount of \$775,326,261.04, or \$1.72 per share, to its shareholder immediately prior to the issue to James Hardie Industries N.V. of 100,000 partly paid shares with a subscription price of \$50 each and otherwise on the terms set out in Annexure 2 to the Implementation Deed dated 20 August 2001 between the Company and James Hardie Industries N.V.",

and the notice shall be accompanied by such other information as is required by law to be provided to JHI NV.

# Implementation Deed

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- (b) Following satisfaction of JHI NV's obligations as set out in clauses 5.2 and 6.1, JHIL shall take all steps necessary to effect the Capital Reduction.
- (c) On or before the Capital Reduction being effected, JHIL shall, subject to it having sufficient profits available for distribution, declare and pay the Dividend to JHI NV.

## 5.2 JHI NV's obligations

JHI NV irrevocably agrees that, subject to clause 5.1(a), it shall:

- (a) sign and return the form of consent to short notice referred to in clause 5.1(a); and
- (b) vote in favour of the Capital Reduction Resolution at the extraordinary general meeting of JHIL held for that purpose.

## 6. Issue of Partly Paid Shares

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### 6.1 JHI NV's obligations

On or before the Capital Reduction Date and before the Capital Reduction becomes effective, JHI NV shall subscribe for the Partly Paid Shares and shall pay to JHIL an amount of A\$50.00 per Partly Paid Share on subscription, the remainder of the issue price to be payable in accordance with the terms of issue as set out in Annexure 2.

### 6.2 JHIL's obligations

As soon as practicable after the Capital Reduction becomes effective, JHIL will issue the Partly Paid Shares to JHI NV and enter JHI NV's name in the JHIL Register as the holder of the Partly Paid Shares.

## 7. Termination

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This Deed may be terminated by either party before 5.00pm on the day before the Second Court Date if:

- (a) the Scheme does not become effective in accordance with its terms by 30 November 2001;
  - (b) either party determines in good faith that one of the conditions precedent set out in clause 3.1 of the Scheme will not be satisfied;
  - (c) the directors of JHIL believe that it is no longer in the best interests of JHIL Shareholders to proceed with the Proposal; or
  - (d) prior to the Scheme becoming Effective, JHIL or its directors receive a formal proposal under which a person would acquire at least 50% of the issued capital of JHIL (whether under a takeover bid, scheme of arrangement or otherwise), the terms of which, in the opinion of the directors of JHIL, are in the best interests of JHIL as a whole, and the JHIL directors decide, in their absolute discretion, that such proposal should be recommended or otherwise allowed to proceed for consideration by the JHIL Shareholders in circumstances where the Proposal will not become effective,
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# Implementation Deed

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and such termination will not affect the liability of either party for a failure to perform an obligation under this Deed.

## **8. Assignment**

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The rights and obligations of each party under this Deed are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other parties.

## **9. No merger**

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The rights and obligations of the parties will not merge on completion of any transaction under this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

## **10. Further assurances**

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Each party shall exercise all such powers as are available to it, do all such acts matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of this Deed.

## **11. Counterparts**

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This Deed may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

## **12. Attorneys**

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Each of the attorneys, if any, executing this Deed respectively states in the presence of each other person executing this Deed that he has at the time of execution no notice of revocation of the power of attorney under the authority of which he does so.

## **13. Costs**

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JHI NV will pay the costs of the parties in entering into this Deed and in effecting the transactions contemplated by it including any stamp duty that is payable in relation to this Deed, the Scheme or the steps to be taken under the Scheme or this Deed.

## **14. Governing law**

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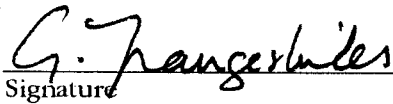
This Deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

# Implementation Deed

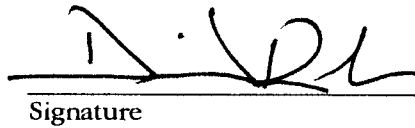
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**EXECUTED** and **DELIVERED** as a Deed in Sydney.

**SIGNED, SEALED and DELIVERED** )  
for and on behalf of **JAMES HARDIE** )  
**INDUSTRIES LIMITED** by its duly )  
appointed attorney: )  
)

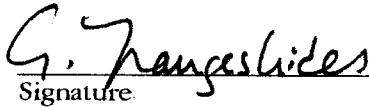
  
Signature

GEORGE FRANGESKIDES  
Witness

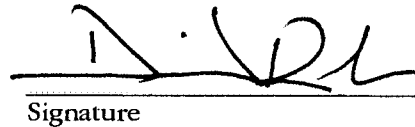
  
Signature

DAVID ROBB  
Attorney

**SIGNED, SEALED and DELIVERED** )  
for and on behalf of **JAMES HARDIE** )  
**INDUSTRIES N.V.** by its duly appointed )  
attorney: )  
)

  
Signature

GEORGE FRANGESKIDES  
Witness

  
Signature

DAVID ROBB  
Attorney

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# Implementation Deed

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## Annexure 1

### JHNV Sale Agreement

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<b>Date</b>	[*] October 2001
<b>Parties</b>	<ol style="list-style-type: none"><li><b>James Hardie Industries Limited</b> (ABN 60 000 009 263) of 8<sup>th</sup> Floor, James Hardie House, 65 York Street, Sydney NSW 2000, Australia (<b>JHIL</b>);</li><li><b>James Hardie Industries N.V.</b> (ARBN 097 829 895) of Strawinskylaan 1725, 1077 XX Amsterdam, The Netherlands, a Dutch limited liability company with its corporate seat in Amsterdam, The Netherlands (<b>JHI NV</b>).</li></ol>
<b>Recitals</b>	JHIL has agreed to sell, and JHI NV has agreed to buy, the Shares on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows.

## 1. Definitions and Interpretation

---

### 1.1 Definitions

In this Agreement, unless the context otherwise requires, capitalised terms shall have the same meaning in this Agreement as is given to them in the Scheme, save that the following capitalised terms shall have the following meanings:

**Agreement** means this agreement entered into by the parties.

**Completion** means completion of the sale and purchase of the Shares by JHIL to JHI NV;

**Completion Date** means the first day (whether or not this is a Business Day) following satisfaction by the parties of their obligations pursuant to clauses 4.2 and 4.3 of the Scheme, or such other date as the parties may agree in writing.

**Encumbrance** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set off or any other security arrangement or agreement in favour of any person.

**JHNV** means James Hardie N.V. of Strawinskylaan 1725, 1077 XX Amsterdam, The Netherlands, a Dutch limited liability company.

# Implementation Deed

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**Notary** means one of the civil law notaries of De Brauw Blackstone Westbroek of Amsterdam, The Netherlands.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act 2001 between JHIL and the Scheme Participants as described in the scheme of arrangement, a copy of which has been initialled by the parties, and which was the subject of Court orders to convene a meeting of JHIL Shareholders.

**Shares** means all of the issued common (or ordinary) shares in JHNV, being 32,000 common (or ordinary) shares with a nominal value of NLG769.74 each.

**Total Value** means the amount calculated as:

$(\text{JHI NV Share Price} \times 450,771,082)$  less Non-JHNV Assets plus Non-JHNV Liabilities

where:

“JHI NV Share Price” means the last sale price, on the Scheme Record Date, of a JHI NV Share trading on a deferred settlement basis on the ASX;

“Non-JHNV Assets” means the sum of the book value of the assets of JHIL and its Subsidiaries excluding all amounts in relation to inter-company equity investments in such Subsidiaries and excluding all assets of JHNV and its Subsidiaries;

“Non-JHNV Liabilities” means the sum of the book value of the liabilities of JHIL and its Subsidiaries (other than the liabilities of JHNV and its Subsidiaries),

in each case as determined in accordance with generally accepted Australian accounting principles as at the date of the most recent quarterly financial statements approved by the Directors of JHIL and released to the ASX prior to the Scheme Record Date, adjusted only for any dividend declarations, capital raisings or capital reductions that may have occurred subsequent to the date of such quarterly financial statements but prior to the Scheme Record Date.

**Warranties** means those warranties set out in clause 4 of this Agreement.

## 1.2 Interpretation and Business Day

Clauses 1.2 and 1.3 of the Scheme shall apply to this Agreement as if set out in this Agreement in full.

## 2. Sale and Purchase and Conditions

---

### 2.1 Sale and Purchase

Subject to the Scheme becoming Effective, JHIL agrees to sell and JHI NV agrees to purchase the Shares for the purchase price set out in clause 2.3 and upon the further terms and conditions of this Agreement.

### 2.2 Sale Terms

The Shares must be sold:

- (a) free of any Encumbrance or right of any third party; and
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# Implementation Deed

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- (b) together with all accrued rights attached to them as at the Completion Date.

## 2.3 Purchase Price

The total purchase price for the Shares will be equal to the Total Value of the Shares, to be left outstanding on inter-company loan account.

## 3. Completion

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### 3.1 Place for Completion

Completion shall take place on the Completion Date at the offices of the Notary or at such other time and place as shall be agreed upon between JHIL and JHI NV.

### 3.2 Obligations at Completion

At Completion:

- (a) the parties will instruct the Notary to execute a notarial deed for the transfer of the Shares in accordance with the requirements of Dutch law; and
- (b) JHIL will give or make available to JHI NV any share certificate which has been issued for the Shares and all corporate records and registers in relation to JHNV.

## 4. Warranties by JHIL

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- (a) JHIL makes the following warranties to JHI NV:
  - (i) **(Ownership)** As at Completion, JHI NV will be the registered owner of all the Shares.
  - (ii) **(No other interests)** There are no shares, or options to be issued shares, in the capital of JHNV other than the Shares.
  - (iii) **(Encumbrances)** There are no Encumbrances over the Shares and, on Completion, JHI NV will acquire all rights, title and interest to and in the Shares clear of any Encumbrance or claim of any person.
- (b) Each of JHIL and JHI NV makes the following warranty to the other:
  - (Power and Authority)** It has the power and authority to enter into and perform and observe this Agreement and have done everything necessary to enable it to do so and may do so free of any pre-emptive rights, rights of first refusal or similar rights, or other contract, arrangement or understanding (written or unwritten) which may restrict its right or ability to do so.

## 5. No Merger

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The rights and obligations of the parties will not merge on completion of any transaction under this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

# Implementation Deed

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## 6. Further Assurances

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Each party shall take all steps, execute all documents and do everything reasonably required by any other party to give effect to any of the transactions contemplated by this Agreement.

## 7. Costs

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Each party shall bear its own costs arising out of the preparation of this Agreement.

## 8. Notices

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- (a) **(Method of Notice)** A notice, approval, consent or other communication in connection with this Agreement:
- (i) must be in writing; and
  - (ii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this clause 8 or if the addressee notifies another address or facsimile number then to that address or facsimile number.

**The address and facsimile number of each party is:**

**JHIL:**

Address: The registered office of JHIL for the time being.

Facsimile: +61 2 9262 5758

Attn: Company Secretary

**JHI NV:**

Address: The registered office of JHI NV for the time being.

Facsimile: +31 20 664 7557

Attn: Company Secretary

- (b) **(Effective Date)** A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- (c) **(Deemed Receipt)** A letter or facsimile is taken to be received:
- (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
  - (ii) in the case of facsimile, or production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
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# Implementation Deed

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## 9. Counterparts

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This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

## 10. Governing Law

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This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**EXECUTED** in Sydney

**SIGNED** on behalf of )  
**JAMES HARDIE INDUSTRIES** )  
**LIMITED** )  
by its attorney )  
in the presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**SIGNED** on behalf of )  
**JAMES HARDIE INDUSTRIES N.V.** )  
by its attorney )  
in the presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

# Implementation Deed

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## Annexure 2

### Terms of Issue of Partly Paid Shares

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<b>Share Type:</b>	Partly paid ordinary shares
<b>Number to be issued:</b>	100,000
<b>Subscription Price:</b>	A\$50 per partly paid ordinary share
<b>Issue Price:</b>	An amount per partly paid ordinary share calculated (and rounded to the nearest cent) as:

$$\frac{\text{JHI NV Share Price} \times 450,771,082}{100,000}$$

100,000

where "JHI NV Share Price" means the last recorded sale price, prior to 4.05pm on the Scheme Record Date, of a JHI NV Share trading on a deferred settlement basis on the ASX.

**Uncalled Amount:** An amount per partly paid ordinary share being the issue price per share less the subscription price per share.

**Calls:** JHIL, through a resolution of its directors or by a formal decision of any liquidator, voluntary administrator, receiver or similar person appointed by the directors, creditors, shareholders or courts, may (subject to satisfaction of certain conditions set out below) make calls upon each partly paid share at any time, from time to time, and (subject as aforesaid) for any or all of the then outstanding Issue Price, provided that such calls are made in respect of each partly paid share and otherwise in accordance with JHIL's constitution as in force as at the date of issue.

**Conditions to making a call:** JHIL may only call for payment of an uncalled amount on the partly paid shares:

- (a) if the directors of JHIL form the view, after due and careful consideration, that the payment of the call is necessary to ensure that JHIL is able to pay its debts as and when they fall due; and
- (b) for such amount as the directors of JHIL believe is necessary to ensure that JHIL remains solvent.

**Transfer:** Notwithstanding anything contrary in the constitution of JHIL, the directors of JHIL may refuse to register any purported transfer of the partly paid shares without giving any reason.

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# Implementation Deed

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- Dividend rights:** As set out in Article 115 of JHIL's Constitution as in force as at the date of issue.
- Voting rights:** On a show of hands, one vote for each holder.  
On a poll, one vote for each share held.
- Variation of terms:** In accordance with JHIL's Constitution and subject to the Corporations Act 2001.
- Rights on a Winding up:** In accordance with Article 146 of JHIL's Constitution.
- Other rights:** Pari passu with holders of ordinary shares.

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