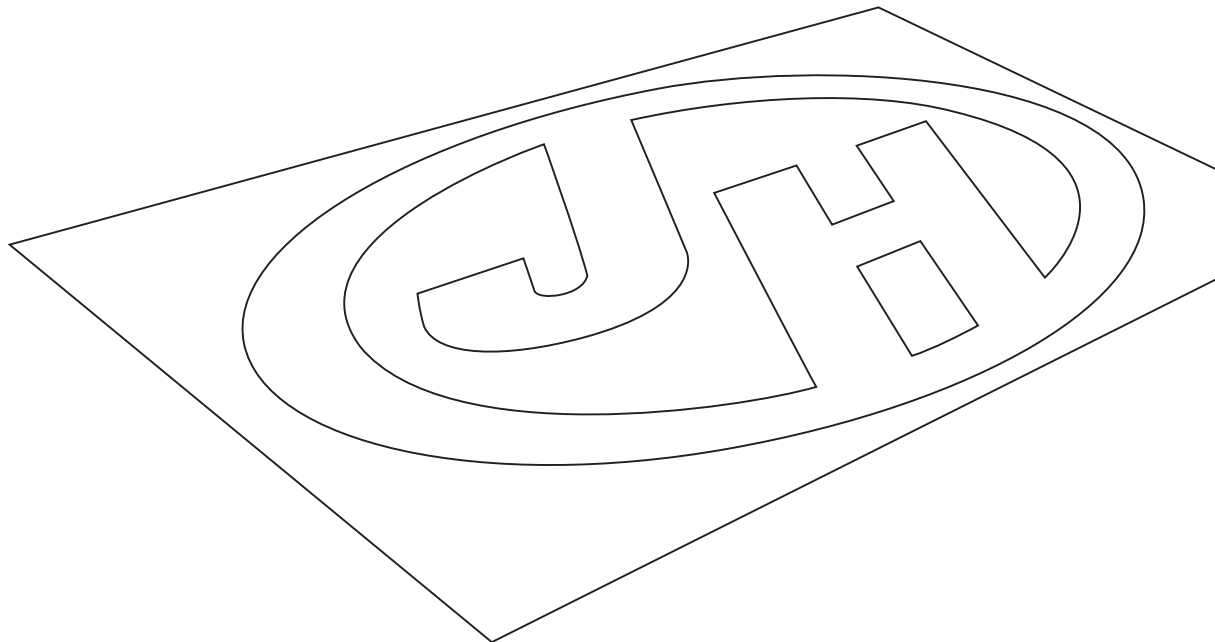


Part D 

# Deed Poll



# Deed Poll

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This Deed Poll is made on 20 August 2001

By James Hardie Industries N.V. (ARBN 097 829 895) of Strawinskylaan 1725, 1077 XX Amsterdam, a limited liability company incorporated under the laws of The Netherlands with its corporate seat in Amsterdam, The Netherlands, (*JHI NV*) in favour of:

**Each holder of ordinary shares in James Hardie Industries Limited (*JHIL*) (ABN 60 000 009 263) on the Scheme Record Date (*Scheme Participants*).**

## BACKGROUND

- (A) The directors of JHIL consider that it is in the interests of JHIL that JHIL Shareholders should consider approving the Scheme and have resolved that JHIL should propose the Scheme.
- (B) The effect of the Scheme will be that all ordinary shares in JHIL held by Scheme Participants will be transferred to JHI NV such that, following completion of the Scheme, JHI NV will hold all of the issued ordinary shares in the capital of JHIL.
- (C) On or about the date of this Deed Poll, JHIL and JHI NV entered into an Implementation Deed (*Implementation Deed*).
- (D) In the Implementation Deed, JHI NV agreed to do all things and execute all documents which may be necessary, incidental or expedient to implement the Scheme including, without limitation, issuing the Scheme Consideration and certain other specific obligations.
- (E) JHI NV is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform its obligations under the Scheme.

## OPERATIVE PROVISIONS

### 1. Definitions and interpretations

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#### 1.1 Definitions and interpretations

In this Deed Poll, unless the context requires otherwise, clauses 1.1 and 1.2 of the Implementation Deed apply as if set out in full.

#### 1.2 Nature of Deed Poll

JHI NV acknowledges that this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it.

### 2. Termination

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#### 2.1 Termination

If the Scheme lapses under clause 3.2(b) of the Scheme or terminates under clause 7 of the Implementation Deed, the obligations of JHI NV under this Deed Poll will automatically terminate.

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# Deed Poll

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## 2.2 Consequences of termination

If this Deed Poll is terminated under this clause 2, then in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) JHI NV shall be released from its obligations to further perform this Deed Poll and any other obligations which by their nature survive termination; and
- (b) Scheme Participants retain the rights they have against JHI NV in respect of any breach of this Deed Poll by JHI NV which occurred before this Deed Poll is terminated.

## 3. Scheme covenants

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### 3.1 Scheme terms

Subject to clause 2, JHI NV shall do all such things and execute all such documents as may be necessary, incidental or expedient to implement the Scheme, including to:

- (a) ensure that each of the conditions precedent set out in clause 3.1 of the Scheme is satisfied;
- (b) make such applications to the Court as are necessary or desirable to give effect to the Scheme; and
- (c) cause to be provided or remitted to each Scheme Participant the Scheme Consideration in respect of each JHIL Share registered in the name of that Scheme Participant in accordance with the provisions of the Scheme.

### 3.2 Other obligations of JHI NV

Subject to clause 2, JHI NV undertakes to perform its obligations in respect of the Capital Reduction and the issue of the Partly Paid Shares, as set out in clauses 5.2 and 6.1 of the Implementation Deed.

## 4. Continuing obligations

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Subject to clause 2, this Deed Poll is irrevocable and remains in full force and effect until JHI NV has completely performed its obligations under this Deed Poll or the earlier termination of this Deed Poll under clause 2.

## 5. Notices

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### 5.1 Notice details

A notice, consent, request or any other communication to JHI NV under this Deed Poll must be in writing and must be left at the address of JHI NV, or sent by prepaid post (airmail if posted to or from a place outside The Netherlands) to the address of JHI NV or sent by facsimile to the facsimile number of JHI NV specified below or any other address or facsimile number the addressee requests in writing.

# Deed Poll

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James Hardie Industries N.V.

Strawinskylaan 1725

1077 XX Amsterdam

The Netherlands

Attention: Company Secretary

Facsimile: +31 20 664 7557

## 5.2 Delivery

A notice, consent, request or any other communication is taken to be received:

- (a) if by delivery, when it is delivered unless it is delivered on a day other than a Business Day in which case it is taken to be received by 9.00am on the next Business Day;
- (b) if a letter, three days after posting (seven, if posted to or from a place outside Australia); and
- (c) if a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

## 6. General

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### 6.1 Cumulative rights

The rights, powers and remedies of JHI NV and the Scheme Participants under this Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Deed Poll.

### 6.2 Waiver and variation

- (a) A provision or a right under this Deed Poll may not be waived except in writing signed by the person granting the waiver.
- (b) A provision of this Deed Poll may not be varied unless the variation is agreed to by JHIL and the Court indicates that the amendment would not in itself preclude approval of the Scheme in which event JHI NV will enter into a further Deed Poll in favour of the Scheme Participants giving effect to such amendment.

## 7. Governing law and jurisdiction

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- (a) This Deed Poll is governed by the laws of New South Wales.
  - (b) JHI NV irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.
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# Deed Poll

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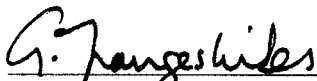
## 8. Assignment

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The rights and obligations of a person under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with, and no person shall attempt or purport to do so.

**EXECUTED** as a Deed Poll in New South Wales.

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

  
\_\_\_\_\_  
Witness

**GEORGE FRANGESKIDES**  
\_\_\_\_\_  
Print name

  
\_\_\_\_\_  
Attorney

**DAVID ROBB**  
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Print name

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