
Scheme implementation deed

DuluxGroup Limited

Nippon Paint Holdings Co., Ltd.

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Parties

- 1 **DuluxGroup Limited (ACN 133 404 065)** of 1956 Dandenong Road, Clayton VIC 3168, Australia (**DuluxGroup**)
 - 2 **Nippon Paint Holdings Co., Ltd. 1200-01-072994** of 2-1-2 Oyodo Kita, Kita-ku, Osaka 531-8511 Japan (**Nippon Paint**)
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Background

- A The parties have agreed that Nippon Paint will acquire DuluxGroup by means of a scheme of arrangement under Part 5.1 of the Corporations Act between DuluxGroup and Scheme Shareholders.
- B Nippon Paint and DuluxGroup have agreed to implement the Scheme on and subject to the terms of this deed.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2 Agreement to proceed with Transaction

2.1 DuluxGroup to propose Scheme

- (a) DuluxGroup agrees to propose and implement the Scheme on and subject to the terms of this deed.
- (b) DuluxGroup must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by the Court of any condition in respect of the Scheme, without the prior written consent of Nippon Paint (such consent not to be unreasonably withheld or delayed in the case of a modification of or amendment to the Scheme made or imposed by the Court).
- (c) Nippon Paint agrees to assist DuluxGroup in proposing and implementing the Scheme on and subject to the terms of this deed.

2.2 Scheme Consideration

- (a) Each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares, on and subject to the terms of the Scheme.

- (b) Subject to the Scheme becoming Effective, Nippon Paint undertakes and warrants to DuluxGroup (in DuluxGroup's own right and separately for the benefit of each of the Scheme Shareholders) that, in consideration of the transfer to Nippon Paint or the Nominee of all Scheme Shares pursuant to the terms of the Scheme, Nippon Paint will:
- (i) accept, or procure the acceptance by the Nominee of, that transfer on the Implementation Date; and
 - (ii) pay, or procure the payment of, an amount equal to the Aggregate Scheme Consideration, in cleared funds, into a trust account operated by DuluxGroup for the benefit of the Scheme Shareholders before 12 noon on the date that is two Business Days before the Implementation Date, provided that any interest accruing on the amount paid into such account will accrue for the benefit of Nippon Paint.

2.3 DuluxGroup Board recommendation

- (a) DuluxGroup represents and warrants to Nippon Paint that, as at the date of this deed, each DuluxGroup Director has confirmed that:
- (i) he or she recommends that DuluxGroup Shareholders vote in favour of the resolution to approve the Scheme without any qualification other than by words to the effect of "in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of DuluxGroup Shareholders"; and
 - (ii) he or she intends to vote, or cause to be voted, all Scheme Shares in which he or she has a Relevant Interest in favour of the resolution to approve the Scheme,

and will not change, withdraw or adversely modify such recommendation or voting intention unless any of the events set out in clause 2.3(b)(iii) or 2.3(b)(iv) occur.

- (b) DuluxGroup must procure that each DuluxGroup Director:
- (i) recommends to DuluxGroup Shareholders that they vote in favour of the resolution to approve the Scheme; and
 - (ii) announces their intention to vote, or cause to be voted, all Scheme Shares in which they have a Relevant Interest in favour of the resolution to approve the Scheme,
- and does not change, withdraw or adversely modify their recommendation or voting intention unless:
- (iii) a Superior Proposal is made and DuluxGroup has complied with its obligations under clause 8 in respect of that Superior Proposal; or
 - (iv) the Independent Expert concludes that the Scheme is not or is no longer in the best interests of DuluxGroup Shareholders (including in any updated or supplementary Independent Expert's Report released, or which will be released, to ASX).

- (c) DuluxGroup must ensure that each of the Scheme Booklet and the public announcement referred to in clause 13(a) contains the recommendation and voting intention set out in clause 2.3(b) above.

3 Conditions precedent

3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective until and unless the following Conditions are satisfied or waived in accordance with clause 3.4:

- (a) **FIRB:** Before 5:00pm on the Business Day before the Second Court Date, either:
 - (i) Nippon Paint has received a written notice under FATA from the Treasurer (or the Treasurer's delegate) stating that, or to the effect that, the Commonwealth Government does not object to the acquisition of all the Scheme Shares by Nippon Paint under the Transaction, either without conditions or subject only to the Standard Tax Conditions or conditions that are acceptable to Nippon Paint (acting reasonably to the extent required by clause 3.3); or
 - (ii) following notice of the proposed acquisition of all the Scheme Shares by Nippon Paint under the Transaction having been given by Nippon Paint to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part 3 of FATA.
- (b) **OIO:** Nippon Paint has received all consents required under the *Overseas Investment Act 2005* (NZ) and the *Overseas Investment Regulations 2005* (NZ) for the implementation of the Scheme either unconditionally or subject to the conditions referred to by the OIO as "Standard Conditions" or conditions that Nippon Paint (acting reasonably to the extent required by clause 3.3) considers to be acceptable and such consents have not been withdrawn, suspended or revoked before 5:00pm on the Business Day before the Second Court Date.
- (c) **Court approval:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (d) **DuluxGroup Shareholder approval:** DuluxGroup Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act.
- (e) **No Restraints:** No restraining order, injunction or other order that would prevent the Scheme from becoming Effective or being implemented is made by a court of competent jurisdiction or Government Agency in Australia or New Zealand and is in effect as at 8.00am on the Second Court Date.
- (f) **No Prescribed Occurrence:** No Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Date.
- (g) **No Material Adverse Change:** No Material Adverse Change occurs before 8.00am on the Second Court Date.
- (h) **DuluxGroup Warranties:** The DuluxGroup Warranties are true and correct in all material respects as at the date of this deed and 5.00pm on the Business Day before the Second Court Date.
- (i) **Nippon Paint Warranties:** The Nippon Paint Warranties are and true and correct in all material respects as at the date of this deed and 5.00pm on the Business Day before the Second Court Date.

3.2 Reasonable endeavours

- (a) DuluxGroup must, to the extent within its power to do so, use reasonable endeavours to procure that the Conditions in each of clauses 3.1(f), 3.1(g) and 3.1(h) are satisfied.
- (b) Nippon Paint must, to the extent within its power to do so, use reasonable endeavours to procure that the Condition in clause 3.1(i) is satisfied.
- (c) Each of DuluxGroup and Nippon Paint must, to the extent within its power to do so, use reasonable endeavours to procure that:
 - (i) the Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and 3.1(e) are satisfied as soon as practicable after the date of this deed; and
 - (ii) there is no occurrence within its control or the control of any of its Related Bodies Corporate that would prevent or be reasonably likely to prevent any of those Conditions being satisfied.
- (d) DuluxGroup will not be in breach of its obligations under clause 3.2(a) or 3.2(c) to the extent that it takes or omits to take any action where permitted by clauses 6.1(b) or 6.1(c).
- (e) Each party must otherwise co-operate with, and comply with all reasonable requests of, the other party for the purposes of procuring the satisfaction of any Condition and must not take any action that will or is likely to hinder or prevent the satisfaction of any Condition.
- (f) Each party must keep the other party reasonably informed of the progress towards satisfying the Conditions.

3.3 Regulatory Approvals

- (a) Without limiting clause 3.2, but subject to clause 3.3(b), Nippon Paint must:
 - (i) give DuluxGroup a reasonable opportunity to review an advanced draft of each application for a Regulatory Approval, and must consider in good faith any reasonable comments provided by or on behalf of DuluxGroup;
 - (ii) apply for each Regulatory Approval as soon as practicable (and, in any event, within 10 Business Days) after the date of this deed, and give DuluxGroup a final copy of each such application;
 - (iii) take all steps reasonably required to obtain each Regulatory Approval as soon as practicable, including responding to requests for information at the earliest practicable time;
 - (iv) keep DuluxGroup reasonably informed of the progress towards obtaining each Regulatory Approval, including promptly notifying DuluxGroup of any issues or matters raised, or any conditions or other arrangements proposed, by a relevant Government Agency;
 - (v) not do, and must ensure that its Related Bodies Corporate and Representatives do not do, any of the following:
 - (A) apply to any Government Agency for any approval, consent, clearance, waiver, concession or similar in connection with the Transaction; or

- (B) send any submission, notification or communication to, or otherwise contact, any Government Agency in connection with the Transaction, in each case other than:
 - (C) in respect of a Regulatory Approval and in accordance with this clause 3.3; or
 - (D) with the prior written consent of DuluxGroup (not to be unreasonably withheld where necessary or desirable for the purposes of the Transaction and where, in the reasonable opinion of DuluxGroup, the proposed action will not prejudice the successful completion of the Transaction in accordance with the terms of this deed);
 - (vi) give DuluxGroup a reasonable opportunity to review an advanced draft of each material submission or communication proposed to be sent to a Government Agency by or on behalf of Nippon Paint (or any of its Related Bodies Corporate or Representatives) in connection with the Transaction, and consider in good faith any reasonable comments provided by or on behalf of DuluxGroup;
 - (vii) allow Representatives of DuluxGroup to attend any material meetings or telephone calls with Government Agencies in connection with the Transaction (unless such attendance is not permitted by the relevant Government Agency); and
 - (viii) promptly notify DuluxGroup and provide reasonable details (including, where applicable, copies) of all material communications or discussions between Nippon Paint (or any of its Related Bodies Corporate or Representatives) and any Government Agency in connection with the Transaction (whether or not such communications or discussions relate to a Regulatory Approval and whether or not such communications or discussions were initiated by Nippon Paint (or any of its Related Bodies Corporate or Representatives) or by a Government Agency), and DuluxGroup shall provide equivalent details to Nippon Paint of any material communications or discussions between DuluxGroup (or any of its Related Bodies Corporate or Representatives) and any Government Agency in connection with the Transaction.
- (b) Before a party provides the other party with any document or information under clause 3.3(a), the disclosing party may redact or exclude such part of that document or information that constitutes confidential information of:
- (i) the disclosing party or any of its Related Bodies Corporate where disclosure to the other party is reasonably likely to materially prejudice the commercial interests of the disclosing party or any of its Related Bodies Corporate; or
 - (ii) a director or executive of the disclosing party or any of its Related Bodies Corporate.
- (c) Nippon Paint undertakes to act reasonably and promptly in considering whether or not to accept or agree to such conditions or undertakings as may be imposed or proposed by a Government Agency in connection with a Regulatory Approval. For the avoidance of doubt, Nippon Paint must promptly accept the following conditions if imposed or proposed by the relevant Government Agency:
- (i) for the purposes of the Condition in clause 3.1(a), Standard Tax Conditions; and
 - (ii) for the purposes of the Condition in clause 3.1(b):

- (A) conditions that are referred to by the OIO as “Standard Conditions”;
and
- (B) conditions that are consistent with any written assurances or other written commitments provided to the OIO by Nippon Paint in, or in connection with, its application for OIO approval.

3.4 Waiver of Conditions

- (a) The Conditions in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d) cannot be waived.
- (b) The Condition in clause 3.1(e) is for the benefit of Nippon Paint and DuluxGroup and may only be waived by written agreement between Nippon Paint and DuluxGroup.
- (c) The Conditions in clauses 3.1(f), 3.1(g) and 3.1(h) are for the sole benefit of Nippon Paint and may only be waived by Nippon Paint in writing.
- (d) The Condition in clause 3.1(i) is for the sole benefit of DuluxGroup and may only be waived by DuluxGroup in writing.
- (e) Waiver of breach or non-fulfilment of a Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.
- (f) A party entitled to waive or to agree to waive a Condition under clause 3.4(c) may do so in its absolute discretion.

3.5 Failure of Condition

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition that has not been waived in accordance with clause 3.4;
 - (ii) a Condition becomes incapable of satisfaction and the breach or non-fulfilment of that Condition that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.4; or
 - (iii) the Scheme has not become Effective by the End Date,
then either DuluxGroup or Nippon Paint may give the other written notice (**Consultation Notice**) within 5 Business Days of the relevant event referred to in clause 3.5(a)(i), 3.5(a)(ii) or 3.5(a)(iii).
- (b) If DuluxGroup or Nippon Paint gives a Consultation Notice, the parties must promptly consult in good faith to determine whether they can reach agreement with respect to:
 - (i) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (or both); or
 - (ii) the Transaction proceeding by way of alternative means or methods.

- (c) If DuluxGroup and Nippon Paint have not reached agreement under clause 3.5(b) within 10 Business Days after a Consultation Notice is given, or if neither of them gives a Consultation Notice in accordance with clause 3.5(a), then either of them may terminate this deed with immediate effect by giving written notice to the other, provided that a party may only exercise such termination right if the relevant circumstances did not arise due to a breach of this deed by that party.

3.6 Certain notices

If a party becomes aware:

- (a) that any Condition has been satisfied; or
- (b) of any fact, matter or circumstance that has resulted, will result or is reasonably likely to result in:
 - (i) a Condition becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms;
 - (ii) a breach of a Warranty provided by that party under this deed or such a Warranty ceasing to be true and correct in all material respects; or
 - (iii) a material breach of this deed by that party,

it must promptly notify the other party in writing and provide such evidence or details as may be reasonably requested by the other party.

4 Implementation steps and Scheme Booklet

4.1 DuluxGroup obligations

DuluxGroup must take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise on and subject to the terms of this deed, and must consult with Nippon Paint on a regular basis about its progress in satisfying its obligations under this clause 4.1. Without limiting the foregoing, DuluxGroup must:

- (a) **Independent Expert:** as soon as reasonably practicable after the date of this deed, appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **Preparation of Scheme Booklet:**
 - (i) prepare the Scheme Booklet (other than the Nippon Paint Information and the Independent Expert's Report) in accordance with all applicable laws, including the Corporations Act and Corporations Regulations, ASIC published policy including Regulatory Guide 60, Takeovers Panel guidance notes and the Listing Rules; and
 - (ii) provide Nippon Paint with drafts of the Scheme Booklet (including a factual accuracy draft of the Independent Expert's Report) in a timely manner, allow Nippon Paint a reasonable period to review and comment on the drafts, and consider in good faith any reasonable comments promptly provided by or on behalf of Nippon Paint, provided that, in respect of the Independent Expert's Report, any such comments must be limited to matters of factual accuracy and DuluxGroup makes no representation, and gives no assurance, as to the extent to which such comments will be considered or incorporated by the Independent Expert;

- (c) **Lodgement of Scheme Booklet:**
 - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act, provided that such draft must not be provided to ASIC without Nippon Paint's prior written consent in respect of the Nippon Paint Information (which must not be unreasonably withheld); and
 - (ii) keep Nippon Paint reasonably informed of any material issues raised by ASIC in relation to the Scheme Booklet and any steps taken to address such issues, and where such issues relate to Nippon Paint Information, DuluxGroup must not take any steps to address such issues in respect of the Nippon Paint Information without Nippon Paint's prior written consent (which must not be unreasonably withheld);
- (d) **Approval of Scheme Booklet:** procure that a meeting of the DuluxGroup Board (or a sub-committee thereof) is convened to consider approving the despatch of the Scheme Booklet to DuluxGroup Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (e) **No objection statement:** apply to ASIC for:
 - (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and
 - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (f) **Tax:** apply to the ATO for a class ruling in relation to the Special Dividends and keep Nippon Paint reasonably informed as to the status, progress and outcomes of the application;
- (g) **First Court Hearing:** apply to the Court for orders under section 411(1) of the Corporations Act directing DuluxGroup to convene the Scheme Meeting;
- (h) **Registration of Scheme Booklet:** subject to receipt from Nippon Paint of the written confirmation referred to in clause 4.2(e) (which must not be unreasonably withheld or delayed), request that ASIC register the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (i) **Despatch:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to DuluxGroup Shareholders;
- (j) **Supplementary disclosure:** if, after despatch of the Scheme Booklet, DuluxGroup becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to DuluxGroup Shareholders under any applicable law, ASIC published policy, Takeovers Panel guidance note or Listing Rule but was not included in the Scheme Booklet,promptly consult with Nippon Paint and make any supplementary disclosure to DuluxGroup Shareholders that DuluxGroup considers reasonably necessary in the circumstances;

- (k) **Scheme Meeting:** convene and hold the Scheme Meeting to approve the Scheme in accordance with the orders made by the Court at the First Court Hearing;
- (l) **Conditions certificate:** at the Second Court Hearing, provide to the Court (through its counsel) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(c)) have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Nippon Paint by 5:00pm on the date that is 3 Business Days prior to the Second Court Date, and any certificate provided to it by Nippon Paint pursuant to clause 4.2(i);
- (m) **Second Court Hearing:** subject to the Conditions (other than the Condition in clause 3.1(c)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;
- (n) **Court Documents:** prepare the Court Documents, provide drafts of those documents to Nippon Paint and consider in good faith any reasonable comments promptly provided by or on behalf of Nippon Paint;
- (o) **Nippon Paint representation at Court Hearings:** allow, and not oppose, any application by Nippon Paint for leave of the Court to be represented by counsel at a Court Hearing;
- (p) **Lodgement of Court order:** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act before 5:00pm on the Business Day immediately following the day on which it receives such office copy;
- (q) **Share Register:** procure that the Share Register is closed as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to Scheme Consideration;
- (r) **Proxy reports:** keep Nippon Paint reasonably informed on the status of proxy forms received for the Scheme Meeting and if it becomes aware that any material DuluxGroup Shareholder intends to vote against the resolution to approve the Scheme;
- (s) **Instruments of transfer:** subject to Nippon Paint satisfying its obligations under clause 2.2(b), on the Implementation Date:
- (i) execute proper instruments of transfer and effect the transfer of Scheme Shares to Nippon Paint (or the Nominee, if applicable)); and
 - (ii) register all transfers of Scheme Shares held by Scheme Shareholders to Nippon Paint (or the Nominee, if applicable),
- in each case in accordance with the Scheme;
- (t) **Quotation of DuluxGroup Shares and ASX listing:** apply to ASX to have:
- (i) trading in DuluxGroup Shares suspended from the close of trading on the Effective Date; and
 - (ii) DuluxGroup removed from the official list of ASX, and quotation of DuluxGroup Shares on ASX terminated, by the close of trading on the trading day following the Implementation Date;

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- (u) **Provision of information to Nippon Paint:** following despatch of the Scheme Booklet to DuluxGroup Shareholders, provide Nippon Paint with such information as Nippon Paint reasonably requests in relation to the shareholdings of DuluxGroup Shareholders in a form reasonably requested by Nippon Paint;
 - (v) **Promotion of Transaction:** unless a majority of DuluxGroup Directors change or withdraw their recommendation as permitted by clause 2.3(b), take such steps as DuluxGroup (acting reasonably and in consultation with Nippon Paint) considers necessary or desirable to promote the merits of the Transaction, which steps may include procuring that senior DuluxGroup Group officers meet with key DuluxGroup Shareholders and communicating with employees, partners, customers and suppliers in a manner which is supportive of the Scheme;
 - (w) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and applicable laws; and
 - (x) **Implementation:** if the Scheme becomes Effective, do all things contemplated of it under the Scheme.

4.2 Nippon Paint obligations

Nippon Paint must take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise on and subject to the terms of this deed, and must consult with DuluxGroup on a regular basis about its progress in satisfying its obligations under this clause 4.2. Without limiting the foregoing, Nippon Paint must:

- (a) **Prepare Nippon Paint Information:** as soon as practicable after the date of this deed:
 - (i) prepare the Nippon Paint Information for inclusion in the Scheme Booklet in accordance with all applicable laws, including the Corporations Act and Corporations Regulations, ASIC published policy (including Regulatory Guide 60), Takeovers Panel guidance notes and the Listing Rules; and
 - (ii) provide DuluxGroup with drafts and updates of the Nippon Paint Information and consider in good faith any reasonable comments provided by or on behalf of DuluxGroup;
- (b) **Final form of Nippon Paint Information:** provide to DuluxGroup the Nippon Paint Information (including drafts thereof) in a form appropriate for inclusion in the Scheme Booklet;
- (c) **Assistance with Scheme Booklet and Court Documents:** provide any assistance or information reasonably requested by DuluxGroup or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to DuluxGroup Shareholders) or any Court Documents, including reviewing drafts of the Scheme Booklet and Court Documents provided by or on behalf of DuluxGroup and promptly providing comments in good faith;
- (d) **Independent Expert's Report:** provide any assistance or information reasonably requested by DuluxGroup or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
- (e) **Confirmation of Nippon Paint Information:** promptly after DuluxGroup requests that it does so (and, in any event, prior to 5:00pm on the Business Day prior to the First Court Date) having provided to Nippon Paint a full copy of the Scheme

Booklet containing the Nippon Paint Information in the form provided or approved by Nippon Paint under clause 4.2(b), confirm in writing to DuluxGroup that:

- (i) it consents to the inclusion of the Nippon Paint Information in the Scheme Booklet, in the form and context in which the Nippon Paint Information appears;
 - (ii) the Nippon Paint Information is accurate and not misleading or deceptive in any material respect (whether by omission or otherwise) and otherwise complies with all applicable laws, ASIC published policy (including Regulatory Guide 60), Takeovers Panel guidance notes and the Listing Rules; and
 - (iii) the Nippon Paint Information is in a form appropriate for inclusion in the Scheme Booklet;
- (f) **Provide comments promptly:** promptly (having regard to the Timetable) provide comments on documents on which DuluxGroup and Nippon Paint are required to consult, including in accordance with clause 4.1(b) or 4.1(n) (including the Scheme Booklet and all Court Documents);
- (g) **Update Nippon Paint Information:** promptly notify DuluxGroup in writing if it becomes aware:
- (i) of information which should have been but was not included in the Nippon Paint Information, and promptly provide DuluxGroup with the omitted information; or
 - (ii) that the Nippon Paint Information is or has become misleading or deceptive in any material respect (whether by omission or otherwise), or otherwise does not comply with applicable laws, ASIC published policy (including Regulatory Guide 60), Takeovers Panel guidance notes and the Listing Rules, and promptly provide DuluxGroup with all information necessary to ensure the Nippon Paint Information complies with applicable laws and is not false or misleading in any material respect (whether by omission or otherwise);
- (h) **Deed Poll:** execute the Deed Poll, and deliver the fully executed Deed Poll to DuluxGroup, in each case before 5:00pm on the Business Day before the First Court Date, and, if the Scheme becomes Effective, fully comply with the Deed Poll;
- (i) **Conditions certificate:** before 8:00am on the Second Court Date, provide to DuluxGroup for provision to the Court at the Second Court Hearing a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(c)) have been satisfied or waived in accordance with clause 3, a draft of which must be provided to DuluxGroup by 5:00pm on the date two Business Days before the Second Court Date;
- (j) **Representation at Court:** ensure that it is represented by counsel at each Court Hearing, and (if requested by the Court) undertake, through its counsel, to do all things within its power to ensure the fulfilment of its obligations under this deed and the Deed Poll and as are reasonably necessary to ensure the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (k) **Scheme Consideration:** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and in the amount contemplated by clause 2.2(b)(ii), the terms of the Scheme and the Deed Poll;

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- (l) **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 2.2(b)(i) and execute instruments of transfer in respect of the Scheme Shares, or procure that the Nominee does so (if applicable);
 - (m) **Tax:** provide DuluxGroup with such assistance and information as may reasonably be requested by DuluxGroup for the purposes of obtaining from the ATO a class ruling in relation to the Special Dividends;
 - (n) **Promotion of Transaction:** participate in efforts reasonably requested by DuluxGroup to promote the merits of the Transaction, including:
 - (i) meeting with key DuluxGroup Shareholders where requested by DuluxGroup; and
 - (ii) providing DuluxGroup with such information and assistance as DuluxGroup reasonably requests to enable it to promote the merits of the Transaction;
 - (o) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and applicable laws; and
 - (p) **Implementation:** if the Scheme becomes Effective, do all things contemplated of it under the Scheme in accordance with the Deed Poll.

4.3 Scheme Booklet

- (a) If Nippon Paint and DuluxGroup are unable to agree on the form or content of a particular part of the Scheme Booklet (other than the Independent Expert's Report), then:
 - (i) if the relevant part of the Scheme Booklet is Nippon Paint Information, DuluxGroup will make such amendments to that part of the Scheme Booklet as required by Nippon Paint (acting reasonably and in good faith); and
 - (ii) in any other case, subject to clause 2.3(c), DuluxGroup (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) Nippon Paint and DuluxGroup agree that the Scheme Booklet will contain a responsibility statement in a form to be agreed between the parties (acting reasonably) to the effect that:
 - (i) DuluxGroup is responsible for the DuluxGroup Information contained in the Scheme Booklet, and none of Nippon Paint or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the DuluxGroup Information;
 - (ii) Nippon Paint is responsible for the Nippon Paint Information contained in the Scheme Booklet, and none of DuluxGroup or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Nippon Paint Information; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Nippon Paint or its Related Bodies Corporate or their respective directors, officers or employees, nor DuluxGroup or its Related Bodies Corporate or their respective directors, officers or employees, assumes any responsibility or liability for the accuracy or completeness of the Independent Expert's Report.

- (c) DuluxGroup must undertake appropriate verification processes in relation to the DuluxGroup Information included in the Scheme Booklet and Nippon Paint must undertake appropriate verification processes in relation to the Nippon Paint Information included in the Scheme Booklet.

5 Permitted Dividends

5.1 Interim Dividend

- (a) Notwithstanding any other provision of this deed, DuluxGroup may (in its absolute discretion) declare and pay to DuluxGroup Shareholders an interim dividend (**Interim Dividend**) of up to \$0.15 per DuluxGroup Share in respect of the six months ended 31 March 2019.
- (b) The Interim Dividend may (in DuluxGroup's absolute discretion) be partially or fully franked, provided that the DuluxGroup franking account must not be in deficit at the end of the income year in which the Interim Dividend is paid, as a result of the franking of the Interim Dividend.
- (c) The record date for the Interim Dividend must be on or before the Scheme Record Date.
- (d) The Scheme Consideration will be reduced by the cash amount of the Interim Dividend that is declared and paid to DuluxGroup Shareholders on or before the Implementation Date. For the avoidance of doubt, in no circumstances will Nippon Paint be required to pay or procure the payment of more than \$9.65 per Scheme Share under this deed, the Scheme or the Deed Poll.

5.2 Special Dividends

- (a) DuluxGroup may declare and pay to DuluxGroup Shareholders one or more special dividends (each a **Special Dividend**) of up to an aggregate of \$0.26 per DuluxGroup Share, provided that, if DuluxGroup has capacity to pay Special Dividends of a higher aggregate amount without breaching clause 5.2(b) or clause 5.2(e), and DuluxGroup requests Nippon Paint's consent to declaring and paying Special Dividends up to such higher aggregate amount, Nippon Paint must consider any such request in good faith and not unreasonably withhold its consent. For the avoidance of doubt, any such higher amount will be subject to clause 5.2(d).
- (b) Each Special Dividend may be partially or fully franked, provided that the DuluxGroup franking account must not be or likely to become in deficit at the end of the income year in which the Special Dividend is paid, as a result of the franking of a Special Dividend, and DuluxGroup must consult with Nippon Paint and consider in good faith the reasonable views of Nippon Paint with respect to the amount of, availability of and basis for franking credits prior to declaring a Special Dividend.
- (c) The record date for a Special Dividend must be on or before the Scheme Record Date.
- (d) The Scheme Consideration will be reduced by the cash amount of each Special Dividend that is declared and paid to DuluxGroup Shareholders on or before the Implementation Date.
- (e) DuluxGroup represents and warrants, and must procure, that each Special Dividend will be paid in cash from profits, retained earnings or distributable reserves and otherwise comply with the Corporations Act and all other applicable laws.

5.3 Dividend reinvestment plan

DuluxGroup must suspend the operation of its dividend reinvestment plan with effect on the date of this deed.

6 Conduct of business and transitional matters

6.1 Conduct of business

- (a) Subject to clause 6.1(b), on from the date of this deed up to and including the Implementation Date, DuluxGroup must:
- (i) procure that the business of the DuluxGroup Group is conducted:
 - (A) in the ordinary course; and
 - (B) in a manner generally consistent with the manner in which such business has been conducted in the 12 months prior to the date of this deed;
 - (ii) make reasonable efforts to:
 - (A) retain the services of Key Management Personnel; and
 - (B) maintain and preserve the DuluxGroup Group's relationships with material customers and suppliers and others with whom the DuluxGroup Group has material business dealings; and
 - (iii) procure that no member of the DuluxGroup Group:
 - (A) declares, pays or distributes any dividend or other share of its profits or assets, other than a Permitted Dividend or where the payment or distribution is made to a member of the DuluxGroup Group to enable a Permitted Dividend to be declared and paid;
 - (B) makes any change to its constitution;
 - (C) acquires or disposes of any securities, business or assets having a value in excess of \$12.5 million, other than to or from another member of the DuluxGroup Group and other than inventory, raw materials or finished goods purchased or sold in the ordinary course of business;
 - (D) makes a commitment to, or incurs, capital expenditure of more than \$4 million in one transaction or a series of related transactions;
 - (E) incurs financial indebtedness by way of new borrowings of an amount exceeding \$12.5 million (excluding any borrowings advanced by a member of the DuluxGroup Group and any extension or replacement of an existing debt facility of the DuluxGroup Group on terms substantially similar to the terms of such debt facility as at the date of this deed, and excluding, for the avoidance of doubt, any indebtedness under or in connection with the DuluxGroup Group's existing debt facilities or private placement notes, or the DuluxGroup Group's hedging arrangements, and any indebtedness incurred to fund the payment of a Special Dividend and maintain an appropriate level of liquidity);
 - (F) enters into, renews, materially varies or terminates any Material Contract (or agrees to do any of those things);
 - (G) agrees to be bound by a restrictive covenant that materially limits the future business activities of the DuluxGroup Group, or agrees to an

- amendment of such a covenant by which the relevant member of the DuluxGroup Group is bound at the date of this deed (and such amendment is materially adverse to the DuluxGroup Group);
- (H) terminates the employment of any Key Management Personnel or materially varies the terms of employment of any Key Management Personnel;
 - (I) increases the annual remuneration of any employee whose total fixed annual remuneration (inclusive of superannuation) is more than \$300,000 or creates or increases any entitlement for any such employee to receive a bonus or other payment in addition to annual remuneration (other than increases of remuneration as part of remuneration reviews conducted in the ordinary course and consistent with past practice, and other than payments required by law);
 - (J) employs or terminates without cause the employment of any person whose total fixed annual remuneration (inclusive of superannuation) is more than \$300,000 except where the employment of such a person is to fill a position vacated by an employee who has resigned;
 - (K) causes any LTEIP Shares or Incentive Shares to vest other than as provided for in Schedule 5 and in accordance with the terms of such incentives as at the date of this deed or in accordance with clause 6.5;
 - (L) accelerates the rights of any director or employee to compensation or benefits of any kind in excess of, in aggregate, \$200,000;
 - (M) pays, incurs or agrees to pay or incur any special exertion fees or board committee or sub-committee fees to the DuluxGroup Directors in relation to the Transaction in excess of, in aggregate, \$150,000;
 - (N) commences or settles any material legal proceedings, claim, investigation, mediation, arbitration or other like proceeding where the amount claimed or the settlement amount (as applicable) exceeds \$10 million;
 - (O) makes any material Tax election or settles or compromises any material liability relating to a Tax Dispute unless the relevant member of the DuluxGroup Group has received an opinion from a partner of a big 4 accounting firm, Queen's Counsel or Senior Counsel with at least 15 years' experience in Tax matters that the election, settlement or compromise is in the best interests of that member of the DuluxGroup Group;
 - (P) terminates or amends, or fails to use reasonable endeavours to renew on its expiry, any insurance policy held by that member of the DuluxGroup Group as at the date of this deed;
 - (Q) agrees to a material variation of, or fails to take reasonable steps to avoid (to the extent within its power) the termination, suspension, revocation or non-renewal of, any licence, permit or other authorisation given or issued to it by any Government Agency, except where the variation, termination suspension, revocation or non-renewal of the relevant licence, permit or other authorisation could not be reasonably expected to have a material adverse effect on the financial or operational performance of the DuluxGroup Group;
 - (R) enters into any guarantee or indemnity on behalf of any person or provides security for the obligations of any person except for in the ordinary course of business;

- (S) changes any accounting policy applied by it to report its financial position other than any change in policy required by a change in accounting standards or law;
 - (T) enters into or resolves to enter into a material transaction with any related party of DuluxGroup (other than a related party which is a member of the DuluxGroup Group) as defined in section 228 of the Corporations Act (excluding any transaction involving paying amounts or conferring benefits to directors of DuluxGroup in accordance with their employment or engagement terms or their statutory or other entitlements); or
 - (U) authorises, or agrees conditionally or otherwise to do, any of the matters set out in this clause 6.1(a)(iii).
- (b) Nothing in clause 6.1(a) restricts any member of the DuluxGroup Group from doing or not doing (or agreeing to do or not do) anything which:
- (i) is required by any applicable law or Government Agency;
 - (ii) is required or permitted by this deed or the Scheme or any transaction contemplated by either;
 - (iii) is required for any DuluxGroup Director to comply with his or her fiduciary or statutory duties, provided that, to the extent possible in the circumstances, DuluxGroup first provides Nippon Paint with reasonable details and consults in good faith with Nippon Paint in relation to any act to be done (or not done) in reliance on this clause 6.1(b)(iii);
 - (iv) is required to pay any Tax or Duty when due;
 - (v) is required to obtain or maintain insurances for the DuluxGroup Group (or any member thereof) or the business conducted by the DuluxGroup Group (or any member thereof);
 - (vi) in the reasonable opinion of DuluxGroup, is a necessary and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
 - (vii) has been Fairly Disclosed in the Disclosure Materials or Disclosure Letter (which, for the avoidance of doubt, includes undertaking actions and matters Fairly Disclosed in the Disclosure Materials or Disclosure Letter which DuluxGroup is considering or proposing to undertake);
 - (viii) would have been disclosed to Nippon Paint had Nippon Paint conducted searches 10 Business Days before the date of this deed of the public records maintained by:
 - (A) ASX;
 - (B) ASIC;
 - (C) the High Court of Australia, Federal Court of Australia, the Fair Work Commission and the Supreme Court of Victoria, New South Wales, South Australia, Western Australia and Queensland;
 - (D) the register established under the *Personal Property Securities Act 2009* (Cth); or
 - (E) IP Australia,or equivalent searches in New Zealand (other than in respect of ASX);
 - (ix) relates to incurring or payment of any Transaction Costs, provided that DuluxGroup must use all reasonable endeavours not to materially exceed

the estimated amount of Transaction Costs specified in the Disclosure Letter; or

- (x) has been consented to in writing by Nippon Paint (such consent not to be unreasonably withheld or delayed).
- (c) For the avoidance of doubt, nothing in clause 6.1(a) restricts the ability of DuluxGroup to respond to a Competing Proposal in accordance with clause 8.
- (d) If DuluxGroup requests Nippon Paint's consent for the purposes of clause 6.1(b)(x) and Nippon Paint does not notify DuluxGroup within:
 - (i) three Business Days of the request being made; or
 - (ii) such shorter period (if any) as specified in the request where, in the reasonable opinion of DuluxGroup, a shorter period is required to avoid material prejudice to the interests of the DuluxGroup Group,then Nippon Paint will be deemed to have consented to the relevant matters the subject of the request.

6.2 Access

- (a) Subject to clauses 6.2(a)(iii) to 6.2(c), from the date of this deed until the Implementation Date, DuluxGroup must use reasonable endeavours to procure that, subject to Nippon Paint providing reasonable notice, Nippon Paint is provided with reasonable access during normal business hours to information and premises of the DuluxGroup Group, and members of the DuluxGroup executive team (including Key Management Personnel), where Nippon Paint reasonably requests such access for the sole purpose of:
 - (i) facilitating Nippon Paint to develop plans for DuluxGroup's operations and business following implementation of the Scheme; or
 - (ii) any other purpose agreed with DuluxGroup in writing,provided that:
 - (iii) information will be made available via a data room; and
 - (iv) DuluxGroup will not be required to provide access under clause 6.2(a) to the extent that doing so would, in the reasonable opinion of DuluxGroup:
 - (A) cause unreasonable disruption to the DuluxGroup Group's business;
 - (B) result in any member of the DuluxGroup Group breaching any applicable law or requirement of any Government Agency, or any obligation of confidentiality owed to a Third Party; or
 - (C) materially prejudice the interests of the DuluxGroup Group (or any member thereof) or compromise legal privilege.
- (b) Nothing in clause 6.2(a) requires DuluxGroup to provide any information concerning its directors' and management's consideration of the Scheme or any Competing Proposal.
- (c) Any information provided by DuluxGroup pursuant to clause 6.2(a) will be subject to the Confidentiality Deed.

6.3 Material change of control consents

- (a) As soon as practicable following the date of this deed, DuluxGroup and Nippon Paint will use reasonable endeavours to agree a list of, and a proposed approach

(which, among other things, will have due regard to applicable legal restrictions) to obtaining, material change of control consents (including change of control consents under each Material Contract). Such consents shall be limited to consents required to avoid a member of the DuluxGroup Group being in breach of a contract that is material to the business of the DuluxGroup Group (taken as a whole) as a result of the Transaction.

- (b) Nippon Paint must not, and must procure that its Related Bodies Corporate and Representatives do not, contact or hold discussions with any party from whom a material change of control consent is required without the prior written consent of DuluxGroup.
- (c) DuluxGroup must cooperate with, and provide reasonable assistance to, Nippon Paint to obtain each material change of control consent as soon as practicable, provided that nothing in this clause 6.3(c) will require DuluxGroup to make any payment or incur any material expense.
- (d) Nippon Paint must take, and must procure that its Related Bodies Corporate take, all actions necessary to comply with any requirements of any party from whom a material change of control consent is required to the extent reasonably necessary to obtain such consent, including providing any information, and entering into or providing any parent guarantees, bank guarantees and/or other forms of guarantee or security, as may be reasonably required by such party.
- (e) Provided that DuluxGroup complies with clauses 6.3(a) and 6.3(c) in all material respects, but notwithstanding any other provision of this deed, the failure to obtain any change of control consent (or similar) will not constitute or contribute to a breach of this deed by DuluxGroup nor a breach of any Condition, and any such failure, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed, except to the extent that such failure results in a material breach of a DuluxGroup Warranty.

6.4 Transition Committee

- (a) On and from the date of this deed, DuluxGroup and Nippon Paint agree to establish a committee (**Transition Committee**) initially comprising up to 3 individuals from each of DuluxGroup and Nippon Paint to be nominated by the relevant party. Each party may substitute its nominated members of the Transition Committee from time to time by notice in writing to the other party.
- (b) The role of the Transition Committee will be to act as a forum for discussion and planning, but not decision making, in relation to overseeing the progress of the Transaction in accordance with this deed and assisting with the eventual transition of the control of DuluxGroup to Nippon Paint upon the Scheme becoming Effective.
- (c) Without limiting clause 6.4(b), the matters considered or discussed by the Transition Committee will include:
 - (i) material developments relating to the business of the DuluxGroup Group, including anything that would reasonably be expected to have a material adverse effect on the financial or operational performance of DuluxGroup Group or its relationships with Government Agencies or key customers or suppliers;
 - (ii) the strategy for engagement with key stakeholders (including Government Agencies and key contractual counterparties);
 - (iii) regular updates from DuluxGroup on the Transaction Costs incurred, paid or payable;
 - (iv) the process for obtaining material change of control consents and giving effect to other implementation steps set out in this deed; and

- (v) the progress and outcomes of the ATO's Streamlined Assurance Review of DuluxGroup and the ATO class ruling application in respect of the Special Dividend(s).
- (d) Any information provided to Representatives of Nippon Paint or DuluxGroup under this clause 6.4 will be subject to the Confidentiality Deed.
- (e) The Transition Committee will meet at least fortnightly or on such shorter timeframes as DuluxGroup and Nippon Paint may agree. Meetings may be held via telephone.
- (f) The members of the Transition Committee may agree to invite other persons to attend meetings of the Transition Committee from time to time (including the parties' respective legal and financial advisers).
- (g) Nothing in this clause 6.4:
 - (i) in any way, or to any extent, limits DuluxGroup's conduct of the business of the DuluxGroup Group in accordance with clause 6.1;
 - (ii) requires DuluxGroup to act at the direction of Nippon Paint or imposes any obligation on DuluxGroup to conduct the business of the DuluxGroup Group in accordance with any direction or representation made by Nippon Paint; or
 - (iii) requires any party to act or participate in any forum to the extent that doing so is contrary to law or the requirements of any Government Agency.

6.5 DuluxGroup Share Rights and Incentive Shares

- (a) DuluxGroup confirms that, as at the date of this deed, the outstanding Share Rights, LTEIP Shares and Incentive Shares on issue are as set out in Schedule 5.
- (b) The parties acknowledge that all outstanding Share Rights will be exercised (or deemed to be exercised) such that, prior to the record date for the Interim Dividend, DuluxGroup Shares are transferred to the respective holders of such Share Rights on a one for one basis.
- (c) The parties agree that the DuluxGroup directors will exercise their discretions under the rules of the LTEIP and other Share Incentive Plans such that:
 - (i) all unvested LTEIP Shares will vest;
 - (ii) 30% of each LTEIP Loan will be forgiven (other than any LTEIP Loan in respect of LTEIP Shares granted under the 2015 LTEIP, it being acknowledged by the parties that the level of forgiveness in respect of each such LTEIP Loan has already been determined, as disclosed to Nippon Paint prior to the date of this deed);
 - (iii) all transfer restrictions in respect of Incentive Shares will be lifted but only to the extent necessary to permit the transfer of the Incentive Shares to Nippon Paint under the terms of the Scheme;
 - (iv) all Incentive Shares will be subject to the terms of the Scheme; and
 - (v) each LTEIP Loan (after taking into account the forgiveness contemplated in sub-paragraph (ii) above, if applicable) will be repaid in full, which repayment may be made out of the Scheme Consideration in respect of the LTEIP Shares to which such LTEIP Loan relates,

in each case subject to the Scheme becoming Effective.
- (d) For the avoidance of doubt, Nippon Paint acknowledges and agrees that, notwithstanding any other provision of this deed:

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- (i) the DuluxGroup Board can exercise such discretions and authorise such actions under the rules of the Share Incentive Plans (or otherwise) as it considers necessary or desirable to give effect to the arrangements and payments contemplated by clause 6.5(b) or 6.5(c) (including, for the avoidance of doubt, acquiring or procuring the acquisition of DuluxGroup Shares on-market for the purpose of satisfying entitlements to DuluxGroup Shares under any Share Incentive Plan); and
 - (ii) no action or matter contemplated in this clause 6.5 will give rise to, or in any way contribute to, any breach of a Condition or any breach of the conduct of business provisions in clause 6.1 or any other provision of this deed.

6.6 Short term incentives

- (a) On or before the Implementation Date, and subject to the Scheme becoming Effective, DuluxGroup may pay (in the absolute discretion of the DuluxGroup Board or any other person(s) delegated such authority by the DuluxGroup Board) the short term incentive and other payments for the financial year ending 30 September 2019 as contemplated by the Disclosure Letter, subject to the aggregate amount of such payments not exceeding the amounts specified in the Disclosure Letter.
- (b) For the avoidance of doubt, Nippon Paint acknowledges and agrees that, notwithstanding any other provision of this deed:
 - (i) the DuluxGroup Board can exercise such discretions and authorise such actions under the rules of DuluxGroup's short term incentive plans (or otherwise) as it considers necessary or desirable to give effect to the arrangements and payments contemplated by clause 6.6(a); and
 - (ii) no action or matter contemplated in this clause 6.6 will give rise to, or in any way contribute to, any breach of a Condition or any breach of the conduct of business provisions in clause 6.1 or any other provision of this deed.

6.7 Employee benefits

- (a) During the period commencing on the Effective Date and ending on the date which is 12 months after the Effective Date (the **Continuation Period**), Nippon Paint must provide, and must procure that any applicable subsidiary of DuluxGroup provides, to any employee of a member of the DuluxGroup Group who continues to be employed by a member of the DuluxGroup Group immediately after the Effective Date (**Continuing Employees**) with:
 - (i) base salary or hourly wage and short-term cash incentive bonus opportunity that, in each case, is no less than the base salary or hourly wage and short-term cash incentive bonus opportunity paid or made available to the applicable Continuing Employee immediately prior to the Effective Date;
 - (ii) a total direct compensation opportunity for the year ending 30 September 2020 (i.e., base salary or hourly wage, short-term cash incentive bonus opportunity, long-term incentive opportunity and retention or other transition opportunity) that is no less favourable (on an overall basis) to the applicable Continuing Employee than his or her total direct compensation (consisting of base salary or hourly wage rate, short-term cash incentive bonus opportunity and long-term incentive opportunity) for the year ending 30 September 2019;
 - (iii) severance benefits that are no less favourable to the applicable Continuing Employee than those applicable immediately prior to the Effective Date; and
 - (iv) group employee benefits that are substantially similar in the aggregate to the group employee benefits provided to the Continuing Employees under the DuluxGroup employee benefit plans immediately prior to the Effective Date,

excluding benefits under the existing Sacrifice Share Acquisition Plan and Employee Share Investment Plan for executives and employees, provided that, in respect of the Employee Share Investment Plan, Nippon Paint must use reasonable endeavours to provide an alternative opportunity of at least the same value (including by way of equity, cash payment or otherwise) to those executives and employees who would otherwise have been eligible to participate in 'Our Share Offers' made under such plan.

- (b) DuluxGroup receives and holds the benefit of clause 6.7(a) for the benefit of each Continuing Employee.

6.8 Resignation of directors

- (a) Subject to implementation of the Scheme in accordance with its terms including the Scheme Consideration having been paid to Scheme Shareholders, DuluxGroup must procure that, with effect on and from the Implementation Date:
 - (i) those persons nominated by Nippon Paint are appointed to the DuluxGroup Board and/or the boards of other members of the DuluxGroup Group, subject to:
 - (A) such persons having duly signed consents to act as a director of the relevant member(s) of the DuluxGroup Group; and
 - (B) such consents to act having been provided to DuluxGroup before the Effective Date; and
 - (ii) those persons nominated by Nippon Paint resign as directors of DuluxGroup and/or other members of the DuluxGroup Group.
- (b) Any nomination by Nippon Paint under clause 6.8(a)(i) or 6.8(a)(ii) must be made by written notice to DuluxGroup, and such notice must be given before the Effective Date.
- (c) Nothing in clause 6.8(a) requires any director of a member of the DuluxGroup Group to forego any rights he or she may have under any deed of access, indemnity and insurance or policy of directors' and officers' insurance.

6.9 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective, Nippon Paint undertakes in favour of DuluxGroup and each other person who is a DuluxGroup Indemnified Party that it will:
 - (i) procure that DuluxGroup and each member of the DuluxGroup Group complies with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time, including to ensure that directors' and officers' run-off insurance cover for such directors and officers obtained in accordance with clause 6.10 is maintained (and DuluxGroup may, at its election, pay any reasonable amounts necessary to ensure such maintenance upfront and prior to the implementation of the Scheme); and
 - (ii) for a period of 7 years from the Implementation Date, ensure that the constitutions of DuluxGroup and each other member of the DuluxGroup Group continue to contain rules which are no less favourable overall than the rules contained in those constitutions at the date of this deed that provide for each company to indemnify each of its current and previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the DuluxGroup Group.

- (b) The undertakings contained in clause 6.9(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) DuluxGroup receives and holds the benefit of clause 6.9(a) to the extent it relates to the other DuluxGroup Indemnified Parties for their benefit.
- (d) The undertakings contained in clause 6.9(a) are given until the earlier of the end of the relevant period specified in clause 6.9(a) or the relevant member of the DuluxGroup Group ceasing to be part of the DuluxGroup Group.

6.10 D&O insurance

Each party acknowledges that, notwithstanding any other provision of this deed, DuluxGroup may, prior to the Implementation Date, enter into arrangements to secure and place a directors' and officers' run-off insurance policy in respect of any current director or officer of any member of the DuluxGroup Group that applies for no less than a 7 year period following the Implementation Date, provided that DuluxGroup has consulted with Nippon Paint and provided a copy of said insurance policy to Nippon Paint before DuluxGroup enters into the arrangements, and has considered in good faith any reasonable comments provided by Nippon Paint.

7 Nippon Paint financing

- (a) Nippon Paint must use commercially reasonable efforts (including enforcing its rights under the Debt Commitment Letter) to obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letter on or prior to the Business Day immediately before the Implementation Date, including by using all reasonable efforts to:
- (i) maintain in effect the Debt Commitment Letter;
 - (ii) negotiate the Debt Document with respect to the Debt Financing on terms which do not:
 - (A) reduce the aggregate amount of the Debt Financing in such way that will or would be reasonably likely to prejudice Nippon Paint's ability to satisfy its obligations under clause 2.2(b)(ii); or
 - (B) impose new or additional conditions precedent to funding of the Debt Financing or adversely modify any such conditions precedent; and
 - (iii) satisfy on a timely basis all conditions precedent to funding of the Debt Financing.
- (b) Nippon Paint must give DuluxGroup prompt written notice of:
- (i) execution of the Debt Document;
 - (ii) any termination or repudiation of the Debt Commitment Letter or Debt Document;
 - (iii) any material breach or default of the Debt Commitment Letter or Debt Document by any party thereto in a manner which could reasonably be expected to prejudice Nippon Paint's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll; or
 - (iv) any material variations of the Debt Commitment Letter or the Debt Documents (or the substitution of such agreements with alternative financing arrangements) together with copies of such variations or alternative financing arrangements.

- (c) Nippon Paint must not terminate or agree to terminate the Debt Commitment Letter or Debt Document without the prior written consent of DuluxGroup where to do so will or would be reasonably likely to prejudice Nippon Paint's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll.
- (d) Nippon Paint must not, without the prior written consent of DuluxGroup:
- (i) replace, amend or agree to amend the Debt Commitment Letter or Debt Document;
 - (ii) waive or agree to waive any of its rights under the Debt Commitment Letter or Debt Document; or
 - (iii) agree or consent to any novation, assignment or transfer of any counterparty's obligations under the Debt Commitment Letter or Debt Document,
- where to do so will or would be reasonably likely to prejudice Nippon Paint's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll.
- (e) If any portion of the Debt Financing becomes unavailable for any reason, Nippon Paint must:
- (i) promptly notify DuluxGroup of such unavailability and the reason; and
 - (ii) use all reasonable efforts to obtain alternative debt financing:
 - (A) in an amount sufficient, when taken together with the available portion of the Debt Financing, to perform its obligations under this deed and the Deed Poll; and
 - (B) on terms which do not include any conditions to the consummation of such alternative financing that are more onerous than the conditions contained in the Debt Commitment Letter.

8 Exclusivity

8.1 Termination of existing discussions

DuluxGroup represents and warrants to Nippon Paint that as at the date of this deed:

- (a) it and its Representatives are not party to and have terminated all discussions with any Third Party in relation to, or which could reasonably be expected to lead to, a Competing Proposal;
- (b) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising a Competing Proposal has been terminated; and
- (c) any Third Party to whom non-public information in relation to the DuluxGroup Group has been provided or made available for the purposes of such Third Party making, formulating, developing or finalising a Competing Proposal has been requested to immediately return or destroy that non-public information in accordance with any agreed terms of confidentiality currently in place with such Third Party.

8.2 No-shop

During the Exclusivity Period, DuluxGroup must not, and must procure that its Representatives do not directly or indirectly:

- For personal use only
- (a) solicit, encourage, initiate or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
 - (b) communicate to any person any intention to do any of the things referred to in clause 8.2(a).

8.3 No-talk and no due diligence

Subject to clause 8.5, during the Exclusivity Period, DuluxGroup must not, and must procure that its Representatives do not directly or indirectly:

- (a) participate in or continue any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal;
- (b) provide, make available, or permit access to any Third Party or its Representatives to any non-public information (including due diligence information) relating to the DuluxGroup Group for the purposes of such Third Party formulating, developing or finalising a Competing Proposal;
- (c) provide or permit access to any Third Party or its Representatives to any premises owned or occupied by a member of the DuluxGroup Group for the purposes of such Third Party formulating, developing or finalising a Competing Proposal;
- (d) provide or permit access to any Third Party or its Representatives to any officers or employees of the DuluxGroup Group (including Key Management Personnel) for the purposes of such Third Party formulating, developing or finalising a Competing Proposal; or
- (e) communicate to any person any intention to do any of the things referred to in clauses 8.3(a) to 8.3(d).

8.4 Notification obligation

During the Exclusivity Period, DuluxGroup must notify Nippon Paint promptly and in any event within two Business Days if DuluxGroup or any of its Representatives receives a written Competing Proposal, and such notice must set out the material terms and conditions of the Competing Proposal and:

- (a) subject to clause 8.5, the identity of the Third Party making the Competing Proposal; or
- (b) otherwise, a general description of the nature of the Third Party.

8.5 Fiduciary exception

Clauses 8.3 and 8.4(a) do not apply to the extent that they restrict any person from taking or not taking any action with respect to a bona fide Competing Proposal which did not arise from a breach of clauses 8.1 or 8.2 where the DuluxGroup Board, acting in good faith, determines:

- (a) after consultation with its financial adviser, that the Competing Proposal is, or could reasonably be expected to become, a Superior Proposal; and
- (b) after receiving advice from its external legal adviser, that failing to respond to the Competing Proposal may constitute a breach of the DuluxGroup Directors' fiduciary or statutory duties.

8.6 Matching right

- (a) DuluxGroup must procure that no DuluxGroup Director publicly changes, withdraws or adversely modifies his or her recommendation in favour of the Scheme to

publicly recommend a Competing Proposal, and must not enter into any agreement to implement a Competing Proposal, unless:

- (i) the DuluxGroup Board has determined, acting in good faith and after consultation with its financial adviser, that the Competing Proposal is, or following the taking of reasonable steps would likely be, a Superior Proposal;
 - (ii) DuluxGroup has provided Nippon Paint in writing with the material terms and conditions of the Competing Proposal (including the identity of the Third Party making the Competing Proposal); and
 - (iii) within 5 Business Days of receiving notice from DuluxGroup under clause 8.6(a)(ii), Nippon Paint does not make an irrevocable offer in writing to DuluxGroup in respect of an amendment to the Scheme Consideration or other terms of the Transaction (**Nippon Paint Counterproposal**) that the DuluxGroup Board determines, acting in good faith and after consultation with its financial adviser, would produce an outcome for DuluxGroup Shareholders that is at least as favourable to them as compared to the outcome that would be produced by the Competing Proposal.
- (b) DuluxGroup acknowledges and agrees that each successive material modification of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under this clause 8.6 and accordingly DuluxGroup must comply with clause 8.6(a) in respect of any such new Competing Proposal.
 - (c) If Nippon Paint makes a Nippon Paint Counterproposal before the deadline specified in clause 8.6(a)(iii) and the DuluxGroup Board determines that such Nippon Paint Counterproposal would produce an outcome for DuluxGroup Shareholders that is at least as favourable to them as the outcome that would be produced by the Competing Proposal, then Nippon Paint and DuluxGroup must each use reasonable endeavours to agree any necessary amendments to this deed, the Scheme and the Deed Poll and to agree any other documentation required to implement the Nippon Paint Counterproposal as soon as reasonably practicable.

8.7 Normal provision of information

Nothing in this clause 8 prevents DuluxGroup from:

- (a) providing information to:
 - (i) its Representatives or to any Government Agencies; or
 - (ii) its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (b) fulfilling its continuous disclosure obligations; or
- (c) making presentations to, or responding to bona fide enquiries from, brokers, portfolio investors or analysts in the ordinary course of business or for the purpose of promoting the merits of the Transaction.

9 Break Fees

9.1 Background

This clause 9 has been agreed to in circumstances where:

- (a) each party believes it and its shareholders will derive significant benefits from the implementation of the Scheme;

- For personal use only
- (b) each party has incurred and will further incur significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
 - (c) each party has requested that provision be made for the payment outlined in clause 9.2 or 9.3 (as applicable), and neither of them would have entered into this deed had such provision not been made;
 - (d) each party believes that:
 - (i) it is reasonable and appropriate to agree to pay the Break Fee or the Reverse Break Fee (as applicable) to secure the other party's entry into this deed; and
 - (ii) each of the Break Fee and Reverse Break Fee represents a genuine and reasonable estimate of costs that would be incurred by either party (as applicable) if the Scheme is not implemented; and
 - (e) each party has received separate legal advice in relation to this deed and the operation of this clause 9.

9.2 Payment of Break Fee

Subject to clauses 9.5 and 9.6, DuluxGroup must pay Nippon Paint the Break Fee, without set-off or withholding, except as required by any law relating to Tax, and within 10 Business Days after receipt of a written demand from Nippon Paint, if any of the following events occur:

- (a) before the Second Court Date, a DuluxGroup Director:
 - (i) changes, withdraws or adversely modifies his or her recommendation that DuluxGroup Shareholders vote in favour of the resolution to approve the Scheme; or
 - (ii) publicly recommends a Competing Proposal,

other than where the Independent Expert has concluded that the Scheme is not or is no longer in the best interests of DuluxGroup Shareholders (including in any updated or supplementary Independent Expert's Report released, or which will be released, to ASX) except where the Independent Expert states that or to the effect that this conclusion is due to the existence of a Competing Proposal;
- (b) Nippon Paint terminates this deed in accordance with clause 12.1(b);
- (c) a Competing Proposal is publicly announced by a Third Party after the date of this deed and before the Second Court Date, and, within 6 months after such announcement, the Third Party making the Competing Proposal acquires all or a majority of the DuluxGroup Shares or otherwise acquires Control of DuluxGroup; or
- (d) at any time before termination of this deed or the Implementation Date, DuluxGroup enters into any arrangement, agreement or understanding (in writing or otherwise) to implement a Competing Proposal,

unless, prior to such occurrence (or, in the case of paragraph (b) only, prior to Nippon Paint giving DuluxGroup notice in accordance with clause 12.1(b)), DuluxGroup has given notice to Nippon Paint in accordance with clause 12.1(b) and the relevant circumstances set out in such notice have not been remedied in accordance with clause 12.1(b)(ii), or notice in accordance with clause 3.5(c).

9.3 Payment of Reverse Break Fee

Subject to clauses 9.5 and 9.6, Nippon Paint must pay DuluxGroup the Reverse Break Fee, without set-off or withholding, except as required by any law relating to Tax, and

within 10 Business Days after receipt of a written demand from DuluxGroup, if DuluxGroup terminates this deed in accordance with clause 12.1(b), unless, prior to DuluxGroup giving Nippon Paint notice in accordance with clause 12.1(b), Nippon Paint has given notice to DuluxGroup in accordance with clause 12.1(b) and the relevant circumstances set out in such notice have not been remedied in accordance with clause 12.1(b)(ii), or notice in accordance with clause 3.5(c).

9.4 Nature of payment

The payment by a party under clauses 9.2 or 9.3 is an amount to compensate the other party for the following costs and expenses:

- (a) external advisory costs (excluding success fees);
- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed.

9.5 Qualifications to Break Fee and Reverse Break Fee

- (a) No amount is payable by DuluxGroup or Nippon Paint under this clause 9 if the Scheme becomes Effective.
- (b) This clause 9 imposes obligations on DuluxGroup and Nippon Paint only to the extent that the performance of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel;
 - (ii) are not found by a court to constitute a breach of the fiduciary or statutory duties of any DuluxGroup Director or any director of Nippon Paint (as applicable); or
 - (iii) is not otherwise unlawful or held to be unenforceable by a court.
- (c) If the Break Fee or Reverse Break Fee has been paid by DuluxGroup or Nippon Paint (as applicable) and clause 9.5(a) or 9.5(b) applies, the party who received such amount must reimburse all (or the relevant portion specified by a court or the Takeovers Panel, as applicable) of that amount to the payor within 10 Business Days after receipt of a written demand for reimbursement from the payor.
- (d) Any amount payable by DuluxGroup or Nippon Paint (as applicable) under this clause 9 is only payable once.

9.6 Other claims

- (a) Notwithstanding any other provision of this deed, each party acknowledges and agrees that:
 - (i) the payment of the Break Fee by DuluxGroup to Nippon Paint is Nippon Paint's sole and exclusive remedy in respect of the matter giving rise to the payment of the Break Fee and otherwise in respect of this deed and the Scheme and no further damages, fees, expenses or reimbursements of any kind will be payable by DuluxGroup in respect of such matter or otherwise in connection with the Scheme or this deed;
 - (ii) the maximum aggregate amount which DuluxGroup may be required to pay in relation to this deed and the Scheme (including any breach of this deed by

DuluxGroup) is the Break Fee, and in no event will the aggregate liability of DuluxGroup under or in connection with this deed exceed the Break Fee; and

- (iii) if the Break Fee is paid to Nippon Paint in accordance with clause 9.2, neither Nippon Paint nor any of its Related Bodies Corporate may make any claim (of whatsoever nature) against DuluxGroup or any other DuluxGroup Indemnified Party under or in connection with this deed or the Scheme.
- (b) Notwithstanding any other provision of this deed (other than clause 9.6(c)), each party acknowledges and agrees that:
- (i) the payment of the Reverse Break Fee by Nippon Paint to DuluxGroup is DuluxGroup's sole and exclusive remedy in respect of the matter giving rise to the payment of the Reverse Break Fee and otherwise in respect of this deed and the Scheme and no further damages, fees, expenses or reimbursements of any kind will be payable by Nippon Paint in respect of such matter or otherwise in connection with the Scheme or connection with this deed;
 - (ii) the maximum aggregate amount which Nippon Paint may be required to pay in relation to this deed and the Scheme (including any breach of this deed by Nippon Paint) is the Reverse Break Fee, and in no event will the aggregate liability of Nippon Paint under or in connection with this deed exceed the Reverse Break Fee; and
 - (iii) if the Reverse Break Fee is paid to DuluxGroup in accordance with clause 9.3, neither DuluxGroup nor any of its Related Bodies Corporate may make any claim (of whatsoever nature) against Nippon Paint or any other Nippon Paint Indemnified Party under or in connection with this deed or the Scheme.
- (c) Clause 9.6(b) does not apply to any claim in respect of, and does not limit the liability of Nippon Paint in connection with, any failure to perform the Deed Poll or to fully discharge the obligations under clause 2.2(b)(ii) if the Scheme becomes Effective.

10 Warranties

10.1 DuluxGroup Warranties

DuluxGroup represents and warrants to Nippon Paint each of the DuluxGroup Warranties is true and correct.

10.2 DuluxGroup's indemnity

DuluxGroup agrees to indemnify Nippon Paint against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Nippon Paint or any of the other Nippon Paint Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the DuluxGroup Warranties.

10.3 Nippon Paint Warranties

Nippon Paint represents and warrants to DuluxGroup each of the Nippon Paint Warranties is true and correct.

10.4 Nippon Paint's indemnity

Nippon Paint agrees to indemnify DuluxGroup against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that

DuluxGroup or any of the other DuluxGroup Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Nippon Paint Warranties.

10.5 Qualifications on DuluxGroup Warranties

- (a) The DuluxGroup Warranties and the indemnity in clause 10.2 are each subject to matters that:
 - (i) are required or permitted by this deed or the Scheme or any transaction contemplated by either;
 - (ii) have been Fairly Disclosed in the Disclosure Materials or Disclosure Letter;
 - (iii) would have been disclosed to Nippon Paint had Nippon Paint conducted the searches referred to in clause 6.1(b)(viii); or
 - (iv) are within the actual knowledge of Nippon Paint as at the date of this deed, which for these purposes will be taken to include and be limited to the facts, matters and circumstances of which the following individuals are actually aware as at the date of this deed:
 - (A) Tetsushi Tado;
 - (B) Yasuyuki Matsumoto;
 - (C) Hiroshi Takenaka;
 - (D) Yutaka Kagami; and
 - (E) Yasumasa Okamoto.
- (b) Any DuluxGroup Warranties that are subject to the awareness, knowledge or belief of DuluxGroup are given by reference to the actual knowledge of any Key Management Personnel (having made reasonable enquiries) as at the date of this deed.

10.6 Qualifications on Nippon Paint Warranties

The Nippon Paint Warranties and the indemnity in clause 10.4 are each subject to matters that are required or permitted by this deed, the Scheme or the Debt Commitment Letter or the Debt Documents (in the form provided to DuluxGroup prior to execution of this deed), or any transaction contemplated by them.

10.7 Survival of Warranties

Each Warranty:

- (a) is severable and separate, and is not limited by reference to any other Warranty or any other provision of this deed;
- (b) survives the termination of this deed; and
- (c) subject to this deed, is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

10.8 Survival of indemnities

Each indemnity in this deed (including those in clauses 10.2 and 10.4):

- (a) is severable;
- (b) is a continuing obligation;

- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

10.9 Timing of Warranties

Each Warranty is given:

- (a) at the date of this deed;
- (b) at the date the Scheme Booklet is despatched to DuluxGroup Shareholders; and
- (c) at 8:00am on the Second Court Date,

unless such Warranty is expressed to be given at a particular time, in which case it is given at that time.

10.10 Reliance

The parties acknowledge that Nippon Paint has entered into this deed in reliance on the DuluxGroup Warranties and DuluxGroup has entered into this deed in reliance on the Nippon Paint Warranties.

11 Releases

11.1 Release of DuluxGroup Indemnified Parties

- (a) Subject to clause 11.1(b), Nippon Paint releases any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, and agrees with DuluxGroup that it will not make any claim (of whatsoever nature), against any DuluxGroup Indemnified Party (other than DuluxGroup) as at the date of this deed in connection with:
 - (i) any breach of any covenant, representation or warranty given by DuluxGroup under this deed;
 - (ii) any disclosures or information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information in connection with this deed or Scheme, except where such DuluxGroup Indemnified Party has engaged in fraud, wilful concealment or wilful misconduct.
- (b) The releases in clause 11.1(a) are subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) DuluxGroup receives and holds the benefit of clause 11.1(a) for each other DuluxGroup Indemnified Party.

11.2 Release of Nippon Paint Indemnified Parties

- (a) Subject to clause 11.1(b), DuluxGroup releases any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, and agrees with Nippon Paint that it will not make any claim (of whatsoever nature), against any Nippon Paint Indemnified Party (other than Nippon Paint) as at the date of this deed in connection with:
 - (i) any breach of any covenant, representation or warranty given by Nippon Paint under this deed;

- (ii) any disclosures or information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or
- (iii) any failure to provide information in connection with this deed or Scheme, except where such Nippon Paint Indemnified Party has engaged in fraud, wilful concealment or wilful misconduct.
- (b) The releases in clause 11.2(a) are subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Nippon Paint receives and holds the benefit of clause 11.2(a) for each other Nippon Paint Indemnified Party.

12 Termination

12.1 Termination by DuluxGroup or Nippon Paint

- (a) DuluxGroup or Nippon Paint may terminate this deed at any time before 8:00am on the Second Court Date in accordance with clause 3.5.
- (b) DuluxGroup or Nippon Paint may terminate this deed at any time before 8:00am on the Second Court Date if Nippon Paint (where DuluxGroup is the terminating party) or DuluxGroup (where Nippon Paint is the terminating party) commits a material breach of this deed (including the Warranties), provided that:
- (i) the terminating party has given written notice to the other parties setting out the relevant circumstances and stating an intention to terminate this deed; and
- (ii) the relevant circumstances have not been remedied to the reasonable satisfaction of the terminating party within 10 Business Days from the date such notice is given (or any shorter period ending at 5:00pm on the Business Day immediately before the Second Court Date).
- (c) Termination under clause 12.1(b) will take effect at the expiry of the period referred to in clause 12.1(b)(ii).

12.2 Termination by Nippon Paint

Nippon Paint may terminate this deed by notice in writing to DuluxGroup at any time before 8:00am on the Second Court Date if any DuluxGroup director publicly withdraws, changes or adversely modifies his or her recommendation that DuluxGroup Shareholders vote in favour of the resolution to approve the Scheme or publicly recommends a Competing Proposal.

12.3 Termination by DuluxGroup

DuluxGroup may terminate this deed by notice in writing to Nippon Paint at any time before 8:00am on the Second Court Date if all or a majority of DuluxGroup Directors withdraw or change their recommendation in either of the circumstances permitted by clauses 2.3(b)(iii) or 2.3(b)(iv).

12.4 Effect of termination

If this deed is terminated in accordance with this clause 12, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 12 and clauses 1, 9, 10, 11 and 14 through 18 (inclusive) will survive termination; and
- (b) each party will retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

13 Public announcements

Immediately after execution of this deed:

- (a) DuluxGroup must issue a public announcement; and
- (b) Nippon Paint must issue a public announcement,

in each case in a form agreed between the parties, and the parties must consult with each other in good faith in relation to all public announcements relating to the Transaction after the date of this deed to the extent that such announcements contain material information which has not previously been disclosed publicly, except where to do so would prevent either party from complying with its continuous disclosure obligations or other applicable law, and provided that neither party will be required to consult with the other in relation to any public announcement relating to termination of this deed or any Competing Proposal.

14 Confidentiality

- (a) DuluxGroup and Nippon Paint acknowledge and agree that they continue to be bound by the Confidentiality Deed, provided that:
 - (i) this deed prevails to the extent of any inconsistency with the Confidentiality Deed; and
 - (ii) notwithstanding any provision of this deed or the Confidentiality Deed, DuluxGroup will not be required to consult with Nippon Paint in relation to any public announcement relating to termination of this deed or any Competing Proposal.
- (b) The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed.

15 Nominee

- (a) Nippon Paint may nominate any of its wholly-owned subsidiaries (**Nominee**) to acquire the DuluxGroup Shares under the Scheme by giving written notice to DuluxGroup on or before the date that is 5 Business Days before the First Court Date.
- (b) If Nippon Paint gives a notice in accordance with clause 15(a), then:
 - (i) unless the context requires otherwise, any references in this deed, the Deed Poll or the Scheme to Nippon Paint acquiring the Scheme Shares or taking any other action under or in respect of this deed, the Deed Poll or the Scheme are to be read as references to the Nominee doing so, and the parties shall document the necessary modifications to Attachments B and C to this deed prior to the First Court Date;

- (ii) Nippon Paint must procure, and undertakes and warrants to DuluxGroup (in DuluxGroup's own right and separately for the benefit each of the Scheme Shareholders) that it will procure, that the Nominee complies with its obligations under this deed, the Deed Poll and the Scheme; and
- (iii) notwithstanding clauses 15(b)(i) and 15(b)(ii), Nippon Paint will continue to be bound by all of the obligations of Nippon Paint under this deed, the Deed Poll and the Scheme and will not be released from any such obligation. For the avoidance of doubt, Nippon Paint will not be in breach of any obligation under this deed, the Deed Poll or the Scheme if the Nominee fully discharges that obligation in accordance with the terms of this deed, the Deed Poll or the Scheme (as applicable).

16 Duty, costs and expenses

16.1 Duty

Nippon Paint:

- (a) must pay all stamp Duties and any related interest, fines and penalties in respect of this deed, the Transaction, the Scheme or any transaction or steps effected or taken under, or contemplated by, this deed, the Transaction or the Scheme; and
- (b) indemnifies DuluxGroup against any liability arising from or in connection with any failure by Nippon Paint to comply with clause 16.1(a).

16.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of the Transaction.

17 GST

- (a) In this clause 17, a word or expression defined in the GST Law has the meaning given to it in the GST Law.
- (b) If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 17(b) (**GST exclusive consideration**) is increased by an amount (**Additional Amount**) equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (c) If a party must reimburse, compensate or indemnify another party for a loss, cost or expense, the amount to be reimbursed, compensated or indemnified is first reduced by the amount equal to any input tax credit the other party, or the representative member of the GST group of which the other party is a member, is entitled to with respect to the loss, cost or expense, and then increased in accordance with clause 17(b) if such amount is consideration for a taxable supply made under or in connection with this deed.
- (d) A party need not make a payment of the Additional Amount until it receives a tax invoice or adjustment note (as appropriate) for the supply to which the payment relates.

18 General

18.1 Notices

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
- (i) in writing;
 - (ii) sent by an authorised representative of the sender; and
 - (iii) marked for the attention of the person named below, and must be:
 - (iv) left at, or sent by commercial courier to, the address set out below; or
 - (v) sent by email to the address set out below.

DuluxGroup

Attention: Simon Black (Company Secretary)

Address: 1956 Dandenong Road, Clayton VIC 3168, Australia

Email: simon.black@duluxgroup.com.au

with a copy (for information purposes only) to npathak@gtlaw.com.au and akauye@gtlaw.com.au

Nippon Paint

Attention: Yasumasa Okamoto (Legal Manager)

Address: 2-1-2 Oyodo Kita, Kita-ku, Osaka 531-8511 Japan

Email: nphdlegal.okamoto@nipponpaint.jp

with a copy (for information purposes only) to Masaki Noda at m_noda@jurists.co.jp and Andrew Walker at awalker@claytonutz.com

- (b) Subject to clause 18.1(c), a Notice is taken to be received:
- (i) if sent by delivery, when it is delivered;
 - (ii) if sent by commercial courier, three days after posting (or seven days after posting if sent from one country to another); or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,whichever happens first.
- (c) If a Notice is taken to be received under clause 18.1(b):
- (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
 - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day.

18.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts competent to hear appeals from those courts.

18.3 No representation or reliance

- (a) Each party acknowledges that no other party (nor any person acting on behalf of another party) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other person, except for any representation or inducement expressly set out in this deed.

18.4 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

18.5 Waivers and consents

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent of a party is required under this deed, such consent may be given or withheld in that party's absolute discretion.

18.6 Variation

- (a) Subject to clause 18.6(b), this deed may only be varied by a document signed by or on behalf of DuluxGroup and Nippon Paint.
- (b) On and from the Implementation Date, the parties may not amend or vary this deed in a manner that adversely affects any right or benefit conferred on a DuluxGroup Indemnified Party or Nippon Paint Indemnified Party under this deed without the prior written consent of the majority of directors of DuluxGroup or Nippon Paint (as applicable) at the date of this deed.

18.7 Assignment

- (a) A party may not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other parties.
- (b) Nippon Paint may assign, grant a security interest over, novate or otherwise transfer by way of security, any of its rights or obligations under this deed to a financier or financiers (or a security agent or security trustee thereof) without the prior written consent of DuluxGroup solely for the purpose of obtaining finance or providing security in connection with the Transaction.

18.8 Further action

Each of the parties will do all things and execute all further documents necessary to give full effect to this deed.

18.9 Entire agreement

Subject to clause 14, this deed supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Deed) in respect of its subject matter and embodies the entire agreement between the parties.

18.10 Severability

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction.
- (b) Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed will have full force and effect in that (and any other) jurisdiction.
- (c) This clause 18.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

18.11 Counterparts

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

Schedule 1 Dictionary

1 Dictionary

Accounting Standards means, at any time:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports;
- (b) the accounting standards approved under the Corporations Act; and
- (c) generally accepted accounting principles, policies, practices and procedures in Australia to the extent not inconsistent with the accounting standards described in paragraph (b).

Additional Amount has the meaning given in clause 17(b).

Aggregate Scheme Consideration means the Scheme Consideration multiplied by the total number of Scheme Shares.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it.

ATO means the Australian Taxation Office.

Break Fee means \$38,146,525.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia or Tokyo, Japan.

Competing Proposal means any proposal, offer, agreement, arrangement or transaction which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or together with one or more Associates) directly or indirectly:

- (a) acquiring a Relevant Interest or economic interest in 15% or more of all DuluxGroup Shares, other than in the ordinary course of trading on ASX;
- (b) acquiring, or acquiring an economic interest in, all or a material part of the assets or business of the DuluxGroup Group (where a material part means assets representing 15% or more of the value of the DuluxGroup Group's total assets); or
- (c) acquiring Control of, or merging with, DuluxGroup, whether by takeover bid, scheme of arrangement or shareholder approved acquisition,

or would otherwise result in the Transaction not being able to be implemented on the basis set out in this deed.

Condition means each condition set out in clause 3.1.

Confidentiality Deed means the confidentiality deed between DuluxGroup and Nippon Paint dated 5 March 2019.

Consultation Notice has the meaning given in clause 3.5(a).

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Continuation Period has the meaning given in clause 6.7(a).

Continuing Employees has the meaning given in clause 6.7(a).

Control has the meaning given in section 50AA of the Corporations Act.

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

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

Court means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act as agreed in writing between Nippon Paint and DuluxGroup.

Court Documents means the documents required for the purposes of the Court Hearings, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders.

Court Hearings means the First Court Hearing and Second Court Hearing.

Debt Commitment Letter means the binding, credit-approved, executed commitment letter and accompanying facility agreement from Sumitomo Mitsui Banking Corporation addressed to Nippon Paint and dated on or about the date of this deed.

Debt Document means the facility agreement related to the Debt Financing on terms contemplated by the Debt Commitment Letter.

Debt Financing means the debt financing commitment pursuant to the Debt Commitment Letter.

Deed Poll means the deed poll to be entered into by Nippon Paint in the form of Attachment C.

Disclosure Letter means the letter so entitled from DuluxGroup provided to Nippon Paint before this deed is entered into.

Disclosure Materials means the Disclosure Letter and the written information, documents and responses disclosed or made available to Nippon Paint or its Representatives by or on behalf of DuluxGroup on or before 7:00pm on 15 April 2019 in the "Project Scarlett" virtual data room (an index of which has been initialled by the parties' lawyers before execution of this deed for the purposes of identification).

DuluxGroup Board means the board of directors of DuluxGroup.

DuluxGroup Director means a director of DuluxGroup.

DuluxGroup Group means, collectively, DuluxGroup and its Related Bodies Corporate.

DuluxGroup Indemnified Parties means DuluxGroup and its Related Bodies Corporate and their respective current and former directors, officers, employees and advisers.

DuluxGroup Information means all the information in the Scheme Booklet other than the Nippon Paint Information and the Independent Expert's Report.

DuluxGroup Share means a fully paid ordinary share in the capital of DuluxGroup.

DuluxGroup Shareholder means a holder of one or more DuluxGroup Shares, as shown in the Share Register.

DuluxGroup Warranties means the representations and warranties of DuluxGroup set out in Schedule 2.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty charge or other amount imposed in respect of any of them, but excludes any Tax.

EBITDA means earnings of the DuluxGroup Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and practices applied by DuluxGroup as at the date of this deed, excluding non-recurring items and non-operating items and also excluding abnormal items such as the Transaction Costs.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any security interest (as defined in section 12 of the *Personal Property Securities Act 2009* (Cth)).

End Date means the date that is 5 months after the date of this deed or such later date as Nippon Paint and DuluxGroup agree in writing.

Exclusivity Period means the period from the date of this deed until the earlier of:

- (a) the termination of this deed in accordance with clause 12; and
- (b) the End Date.

Fairly Disclosed means, in relation to a matter, that sufficient information about that matter is disclosed in such way to enable a reasonable and sophisticated investor experienced in M&A transactions involving businesses of the same or similar nature to the businesses conducted by the DuluxGroup Group to identify the nature and scope of the relevant matter.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing DuluxGroup to convene the Scheme Meeting is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **First Court Hearing**.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel).

GST means goods and services tax, or a similar value added tax, levied or imposed in Australia under the GST Law.

GST exclusive consideration has the meaning given in clause 17(b).

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation Date means the fifth Business Day after the Record Date or such other day as Nippon Paint and DuluxGroup agree in writing.

Incentive Shares means DuluxGroup Shares granted under any Share Incentive Plan, including LTEIP Shares and DuluxGroup Shares granted upon the exercise of Share Rights, the number of which is as set out in Schedule 5.

Independent Expert means the independent expert to be appointed by DuluxGroup to prepare the Independent Expert's Report in accordance with clause 4.1(a).

Independent Expert's Report means the report prepared and issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet opining on whether the Scheme is in the best interests of DuluxGroup Shareholders, and includes any update or supplement to that report.

Insolvency Event means, in relation to any entity:

- (a) the entity resolving or applying to court for an order that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager, trustee or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement or other compromise or arrangement with its creditors or any class of them;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation);
- (f) the entity being deregistered as a company or otherwise dissolved; or
- (g) something having a substantially similar effect to any of the things described in paragraphs (a) to (f) happens in connection with the entity under the law of Australia or any foreign jurisdiction.

Interim Dividend has the meaning given in clause 5.1(a).

Key Management Personnel means the key management personnel of DuluxGroup (excluding non-executive directors) from time to time. As at the date of this deed, such persons are:

- (a) Patrick Houlihan;
- (b) Stuart Boxer;
- (c) Patrick Jones;
- (d) Brad Hordern; and
- (e) Martin Ward.

Listing Rules means the official listing rules of ASX.

LTEIP means the DuluxGroup Long Term Equity Incentive Plan.

LTEIP Loan means, in respect of a loan advanced by DuluxGroup under the LTEIP, the amount outstanding on such loan.

LTEIP Shares means DuluxGroup Shares granted under the LTEIP, the number of which is as set out in Schedule 5.

Material Adverse Change means a Specified Event which (either individually or when aggregated with other Specified Events of the same or substantially similar nature) would be reasonably likely to result in the value of EBITDA of the DuluxGroup Group for the financial year ending 30 September 2019 (**FY19 EBITDA**) being at least \$50 million less than what FY19 EBITDA could reasonably be expected to have been but for the relevant Specified Event(s), provided that:

- (a) the impact of the relevant Specified Event(s) on the value of FY19 EBITDA must be determined after taking into account any matters which offset, or are reasonably likely to offset, the impact of the same Specified Event(s) on the value of FY19 EBITDA, subject to DuluxGroup providing reasonable evidence to Nippon Paint of the impact that such matters will have, or are reasonably likely to have, on the value of FY19 EBITDA; and
- (b) any event, matter or occurrence will be disregarded if it:
 - (i) is required or permitted by this deed or the Scheme or transactions contemplated by either;
 - (ii) would have been disclosed to Nippon Paint had Nippon Paint conducted the searches referred to in clause 6.1(b)(viii);
 - (iii) has been Fairly Disclosed in the Disclosure Materials or Disclosure Letter (which, for the avoidance of doubt, includes undertaking actions and matters Fairly Disclosed in the Disclosure Materials or Disclosure Letter which DuluxGroup is considering or proposing to undertake);
 - (iv) is within the actual knowledge of Nippon Paint as at the date of this deed (as determined in accordance with clause 10.5(a)(iv));
 - (v) is approved, consented to or requested by Nippon Paint or any of its Related Bodies Corporate;
 - (vi) relates to incurring or payment of any Transaction Costs, provided that DuluxGroup must use reasonable endeavours not to materially exceed the estimated amount of Transaction Costs specified in the Disclosure Letter; or
 - (vii) results or arises from or in connection with:
 - (A) any actual or proposed change in any law, regulation or policy, or in any accounting principle or standard, or in the interpretation of any of the foregoing;
 - (B) general economic, business or political conditions or changes in any such conditions (including disruptions to, or fluctuations in, financial markets, or changes in interest rates, foreign currency exchange rates or commodity prices) other than such conditions, or changes in any such conditions, that have a disproportionate effect on the DuluxGroup Group as compared to other participants in the industries in which DuluxGroup Group operates;
 - (C) any act of terrorism, war (whether or not declared) natural disaster or the like; or

- (D) the announcement of, or the entry into or performance of, this deed or the Scheme or the transactions contemplated by either.

Material Contract means any agreement or arrangement to which a member of the DuluxGroup Group is party that requires or may require payments to or by a member of the DuluxGroup Group in excess of \$20 million in aggregate over the life of the agreement or arrangement.

Nippon Paint Counterproposal has the meaning given in clause 8.6(a)(iii).

Nippon Paint Indemnified Parties means Nippon Paint and its Related Bodies Corporate and their respective directors, officers, employees and advisers.

Nippon Paint Information means all information regarding Nippon Paint and its Related Bodies Corporate provided by or on behalf of Nippon Paint to DuluxGroup or its Representatives for inclusion in the Scheme Booklet.

Nippon Paint Warranties means the representations and warranties of Nippon Paint set out in Schedule 3.

Nominee has the meaning given in clause 15(a).

Notice has the meaning given in clause 18.1(a).

OIO means the New Zealand Overseas Investment Office which administers New Zealand's overseas investment laws.

Permitted Dividend means the Interim Dividend or a Special Dividend (as applicable).

Prescribed Occurrence means the occurrence of any of the matters set out in Schedule 4.

Record Date means 7:00pm on the fifth Business Day after the Effective Date of the Scheme, or such other time and date as Nippon Paint and DuluxGroup agree in writing.

Regulatory Approval means an approval, consent or notification required to satisfy the Condition in clause 3.1(a) or 3.1(b).

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Representative means, in respect of a party, an employee, agent, officer, director, adviser or financier of or to that party (or of a Related Body Corporate of that party), and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

Reverse Break Fee means \$38,146,525.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between DuluxGroup and the Scheme Shareholders, in the form of Attachment B or such other form as agreed in writing between Nippon Paint and DuluxGroup.

Scheme Booklet means the explanatory statement in respect of the Scheme to be prepared by DuluxGroup in accordance with section 412 of the Corporations Act, which

will contain (among other things) the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

Scheme Consideration means, in respect of each Scheme Share, \$9.80 subject to, and as adjusted in accordance with, clauses 5.1(d) and 5.2(d) (if applicable).

Scheme Meeting means the meeting of DuluxGroup Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Share means a DuluxGroup Share held by a Scheme Shareholder as at the Record Date.

Scheme Shareholder means a DuluxGroup Shareholder as at the Record Date.

Second Court Date means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

Share Incentive Plan means an incentive plan operated by DuluxGroup under which DuluxGroup may grant DuluxGroup Shares and/or Shares Rights (or other securities), including the LTEIP, Employee Equity Plan, Sacrifice Share Acquisition Plan and Employee Share Investment Plan.

Share Register means the register of DuluxGroup Shareholders maintained in accordance with the Corporations Act.

Share Right means a right to acquire a DuluxGroup Share granted under any Share Incentive Plan, with the number of rights (to be exercised in accordance with clause 6.5(b)) set out in Schedule 5.

Special Dividend has the meaning given in clause 5.2(a).

Specified Events means any event, occurrence or matter that:

- (a) occurs after the date of this deed; or
- (b) occurs before the date of this deed but only becomes known to Nippon Paint after the date of this deed.

Standard Tax Conditions means the conditions set out in the list of standard tax conditions published in Guidance Note 47 on the website of the Foreign Investment Review Board and such other Tax-related conditions as are customarily imposed by the Foreign Investment Review Board (including, for the avoidance of doubt, conditions requiring information or confirmations to be provided in respect of matters such as ownership structure, borrowings, capital structure, related party financing, cross border related party financing arrangements, distributions, tax consolidation, arrangements covered by "Taxpayer Alerts" and thin capitalisation rules).

Superior Proposal means a bona fide Competing Proposal which the DuluxGroup Board, acting in good faith and after taking written advice from its legal and financial advisers, determines:

- (a) is reasonably capable of being completed substantially in accordance with its terms; and
- (b) would be more favourable to DuluxGroup Shareholders than the Transaction (as modified by any Nippon Paint Counterproposal) if completed substantially in accordance with its terms.

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Tax means any tax, levy, charge, impost, fee, deduction, GST, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

Tax Dispute means a dispute or disagreement between a member of the DuluxGroup Group and a Government Agency in relation to a demand or assessment from that Government Agency requiring the payment of Tax or Duty by that member of the DuluxGroup Group.

Third Party means a person other than DuluxGroup, Nippon Paint and their respective Associates.

Timetable means the indicative timetable for the implementation of the Transaction set out in Attachment A.

Transaction means the acquisition of all of the DuluxGroup Shares by Nippon Paint (or the Nominee) by means of the Scheme.

Transaction Costs means costs and expenses (including GST) incurred by DuluxGroup in connection with the Transaction, being fees payable to external advisers of DuluxGroup, the Independent Expert and costs such as share registry, printing, postage and meeting costs involved in implementing the Transaction (but excluding costs of D&O insurance under clause 6.10 and excluding payments to employees and officers of the DuluxGroup Group permitted by clause 6.1, 6.5 and 6.6).

Transition Committee has the meaning given in clause 6.4(a).

Warranty means a DuluxGroup Warranty or Nippon Paint Warranty (as applicable).

2 Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including”, “such as”, “for example” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;

- (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (x) a monetary amount is in Australian dollars.
- (g) An agreement on the part of two or more persons binds them jointly and severally.
 - (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
 - (i) In determining the time of day where relevant to this deed, the time of day is:
 - (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
 - (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

Schedule 2 **DuluxGroup Warranties**

- (a) **Validly existing:** Each member of the DuluxGroup Group is a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** DuluxGroup has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme.
- (c) **Corporate action:** DuluxGroup has taken the necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme.
- (d) **Binding:** This deed is a valid and binding obligation on DuluxGroup, enforceable against DuluxGroup in accordance with its terms.
- (e) **Performance:** The execution and performance by DuluxGroup of this deed and each transaction contemplated by it does not and will not violate or breach any provision of:
- (i) any writ, order or injunction, judgment, law, rule or regulation to which DuluxGroup is party or by which it is bound; or
 - (ii) DuluxGroup's constitution.
- (f) **Capital structure:**
- (i) As at the date of this deed, there are 389,250,252 DuluxGroup Shares on issue.
 - (ii) DuluxGroup has not issued or agreed to issue any other DuluxGroup Shares, securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, DuluxGroup Shares (other than in connection with the Share Rights set out in Schedule 5).
 - (iii) DuluxGroup is not under any obligation to issue, and no person has any right to require or call for the issue of, any DuluxGroup Shares or other securities, rights or instruments issuable by DuluxGroup (whether such obligation or right is conditional or otherwise), other than in connection with the Share Rights set out in Schedule 5.
 - (iv) In connection with the Share Rights and Incentive Shares set out in Schedule 5, DuluxGroup is not under any obligation to issue, and no person has any right to require or call for the issue of, any new DuluxGroup Shares in relation to the exercise of the Share Rights or the vesting of the LTEIP Shares or Incentive Shares pursuant to any Share Incentive Plan or any other arrangement.
- (g) **DuluxGroup Information:** The DuluxGroup Information included in the Scheme Booklet and any supplementary disclosure made to DuluxGroup Shareholders pursuant to clause 4.1(j) (excluding any information provided by Nippon Paint) has been prepared in good faith and, as at the date of the Scheme Booklet or supplementary disclosure (as applicable):
- (i) is not false or misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (ii) complies in all material respects with the requirements of the Corporations Act and Corporations Regulations, Listing Rules, Takeovers Panel guidance

notes and ASIC published policy (including Regulatory Guide 60), as applicable.

- (h) **Information provided to Independent Expert:** The information provided to the Independent Expert by or on behalf of DuluxGroup has been and will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (i) **Solvency:** No member of the DuluxGroup Group is the subject of an Insolvency Event, and an Insolvency Event will not occur to any subsidiary of DuluxGroup prior to implementation of the Scheme.
- (j) **Disclosure:** As at the date of this deed:
- (i) DuluxGroup is in compliance in all material respects with its continuous disclosure obligations under Listing Rule 3.1; and
 - (ii) except for Nippon Paint's proposal to acquire DuluxGroup, DuluxGroup is not withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A, and immediately following release of the agreed public announcement pursuant to clause 13(a), DuluxGroup will not be withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A.
- (k) **Disclosure Materials:** The Disclosure Materials were compiled and made available to Nippon Paint and its Representatives in good faith and, as at the date of this deed, DuluxGroup is not aware of any material information contained in the Disclosure Materials that is false or misleading in any material respect (including by omission). DuluxGroup has not, prior to the date of this deed, intentionally withheld from the Disclosure Materials any information which would reasonably be expected to be material to a reasonable buyer's evaluation of the DuluxGroup Group and the merits of the Transaction.
- (l) **Documents and announcements lodged with Government Agencies:** So far as DuluxGroup is aware, no material information contained in any document or announcement which DuluxGroup or any of its Related Bodies Corporate has lodged or filed with, or otherwise given to, ASIC or the ASX (or which has been so lodged, filed or given on its behalf or on behalf of any of its Related Bodies Corporate) since the date 12 months prior to the date of this deed, and which is currently publicly available or otherwise in the public domain (each a **DuluxGroup Public Document**), was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the DuluxGroup Public Document was lodged or filed with or given to the Government Agency, or the information contained in the DuluxGroup Public Document was otherwise expressed to be given.
- (m) **DuluxGroup Group:**
- (i) The corporate structure diagram provided in the Disclosure Materials lists all members of the DuluxGroup Group and the details included are true and accurate in all material respects.
 - (ii) No member of the DuluxGroup Group holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity (other than an entity identified in the corporate structure diagram provided in the Disclosure Materials).

- (n) **Material Contracts:** The Disclosure Materials contain true and complete copies of all Material Contracts.
- (o) **Compliance with laws:** So far as DuluxGroup is aware, each member of the DuluxGroup Group has complied with applicable laws and regulations in all material respects and holds all material licences, authorisations and permits necessary for it to conduct its business as presently conducted and is not in material breach of, or material default under, any such licences, authorisations or permits, other than where the failure to comply with such laws and regulations or to hold such licences, authorisations and permits, or where the relevant breach or default, could not be reasonably expected to have a material adverse effect on the financial or operational performance or reputation of the DuluxGroup Group.
- (p) **Financial information:**
DuluxGroup's financial statements for the financial year ended 30 September 2018:
- (i) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, the Accounting Standards and all other applicable laws and regulations; and
 - (ii) give a true and fair view of the financial position and the assets and liabilities of the DuluxGroup Group.
- (q) **No defaults:** So far as DuluxGroup is aware, no member of the DuluxGroup Group is in material default under a Material Contract, nor has anything occurred which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event, review event or similar event or give another party a termination right or right to accelerate any material right or obligation under any Material Contract, in each case other than where the relevant circumstances could not be reasonably expected to have a material adverse effect on the financial or operational performance of the DuluxGroup Group.

Schedule 3 Nippon Paint Warranties

- (a) **Validly existing:** Nippon Paint is a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** Nippon Paint has full corporate power and lawful authority to execute, deliver and perform this deed and the Deed Poll.
- (c) **Corporate action:** Nippon Paint has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Deed Poll.
- (d) **Binding:** This deed is a valid and binding obligation on Nippon Paint, enforceable against Nippon Paint in accordance with its terms.
- (e) **Performance:** The execution and performance by Nippon Paint of this deed and each transaction contemplated by it does not and will not violate or breach any provision of:
- (i) any writ, order or injunction, judgment, law, rule or regulation to which Nippon Paint is party or by which it is bound; or
 - (ii) Nippon Paint's constitution or other constituent documents.
- (f) **Nippon Paint Information:** The Nippon Paint Information included in the Scheme Booklet, and any other information provided by Nippon Paint pursuant to clause 4.2(f), has been prepared in good faith and, as at the date of the Scheme Booklet or the date on which such information is so provided (as applicable):
- (i) is not false or misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (ii) complies in all material respects with the requirements of the Corporations Act and Corporations Regulations, Listing Rules, Takeovers Panel guidance notes and ASIC Regulatory Guide 60 (as applicable).
- (g) **Information provided to Independent Expert:** The information provided to the Independent Expert by or on behalf of Nippon Paint has been and will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (h) **Insolvency Event:** Neither Nippon Paint nor any of its Related Bodies Corporate is the subject of an Insolvency Event, and an Insolvency Event will not occur in relation to the Nominee (if any) or any subsidiary of Nippon Paint prior to implementation of the Scheme.
- (i) **Regulatory action:** As at the date of this deed, no regulatory action of any nature of which Nippon Paint is aware has been taken or threatened that may prevent or in any way restrict its ability to fulfil its obligations under this deed and the Deed Poll.
- (j) **No other regulatory approvals:** Other than the Regulatory Approvals, no approval, consent, waiver, clearance, concession, allowance, notification or authorisation is required to be obtained from, or made to, any Government Agency in order for Nippon Paint to execute and perform this deed and the Deed Poll.
- (k) **No dealings with DuluxGroup Shareholders:** Neither Nippon Paint nor any of its Associates has any agreement, arrangement or understanding with any

DuluxGroup Shareholder under which that DuluxGroup Shareholder (or an Associate of that DuluxGroup Shareholder):

- (i) would or may be or become entitled to receive:
 - (A) consideration for their DuluxGroup Shares that is different from the Scheme Consideration; or
 - (B) any benefit in connection with the Scheme that is not also offered to all other DuluxGroup Shareholders on the same terms; or
 - (ii) agrees to vote in favour of the Scheme or against any Competing Proposal.
- (l) **No dealings with DuluxGroup directors or employees:** Neither Nippon Paint nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of DuluxGroup or any other member of the DuluxGroup Group relating in any way to the Transaction or the business or operations of the DuluxGroup Group after the Effective Date.
- (m) **Debt Commitment Letter:**
- (i) Nippon Paint has delivered to DuluxGroup true, complete and correct copies of the executed Debt Commitment Letter.
 - (ii) The Debt Commitment Letter has been executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, Nippon Paint and (so far as Nippon Paint is aware) Sumitomo Mitsui Banking Corporation that are enforceable in accordance with their terms.
 - (iii) Other than as permitted under this deed, the Debt Commitment Letter has not been:
 - (A) terminated or rescinded, and Nippon Paint is not in default thereunder; or
 - (B) amended in any respect which will, or is reasonably likely to, prejudice Nippon Paint's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll (and no such amendment has been agreed to by Nippon Paint).
 - (iv) Nippon Paint will enforce its rights under the Debt Commitment Letter to the extent failure to do so may prejudice its ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll.
 - (v) The Debt Financing, together with the internal cash reserves available to Nippon Paint for the Transaction on an unconditional basis, is sufficient to satisfy all of Nippon Paint's payment obligations under this deed and the Deed Poll or otherwise in connection with the Transaction, including paying the Scheme Consideration in accordance with the deed and the Deed Poll and any expenses of Nippon Paint or any of its Related Bodies Corporation in connection with the Transaction.
- (n) **Debt Document:** As at the date on which the Debt Document is entered into and at 8:00am on the Second Court Date, the Debt Document:
- (i) has been duly executed by, and constitutes legally valid and enforceable obligations on, and rights of, Nippon Paint and (so far as Nippon Paint is aware) Sumitomo Mitsui Banking Corporation that are enforceable in accordance with their terms;
 - (ii) other than as permitted under this deed, has not been terminated or rescinded, and no "Certain Funds Default" (as defined in the Debt Document) is subsisting; and

- (iii) other than as permitted under this deed, has not been amended in any respect which will, or is reasonably likely to, prejudice Nippon Paint's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll (and no such amendment has been agreed to by Nippon Paint),

and Nippon Paint will enforce its rights under the Debt Document to the extent failure to do so may prejudice its ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll.

- (o) **Reasonable basis:** As at the date of this deed, Nippon Paint has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements) to satisfy its obligations to pay the Scheme Consideration in accordance with this deed and the Deed Poll.
- (p) **Availability of funding on Second Court Date:** By 8.00am on the Second Court Date, Nippon Paint will, subject to clause 4.2 (*Further conditions precedent*) and clause 4.3 (*Certain funds*) of the Debt Document (in the form provided to DuluxGroup's advisers prior to signing this deed), have available to it on an unconditional basis (other than conditions relating to the approval of the Court, Scheme becoming Effective or procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Scheme becomes Effective) sufficient cash amounts (whether from internal cash resources or external funding arrangements or a combination of both) to ensure that the Scheme Consideration is paid in accordance with this deed and the Deed Poll.
- (q) **Availability of funding for implementation:** On the date that is two Business Days before the Implementation Date, Nippon Paint will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding arrangements or a combination of both) to satisfy Nippon Paint's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
- (r) **No shareholder approvals:** No approvals are required from shareholders of Nippon Paint (or any class of them) in connection with the execution or performance of this deed or the Deed Poll.

Schedule 4 Prescribed Occurrences

- (a) DuluxGroup converting all or any of its shares into a larger or smaller number of shares;
- (b) DuluxGroup resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) DuluxGroup:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the DuluxGroup Group issuing shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a performance right or an option other than:
 - (i) on vesting or exercise of, or in respect of, an Incentive Share existing as at the date of this deed; or
 - (ii) to a member of the DuluxGroup Group;
- (e) any member of the DuluxGroup Group issuing, or agreeing to issue, securities convertible into shares or debt securities other than where the securities are issued, or agreed to be issued, to a member of the DuluxGroup Group;
- (f) DuluxGroup declaring, paying or distributing any dividend, distribution, bonus, special payment or other share of its profits or assets, other than the Permitted Dividends;
- (g) a member of the DuluxGroup Group disposing, or agreeing to dispose, of the whole, or a substantial part, of the DuluxGroup Group's business or property;
- (h) a member of the DuluxGroup Group granting, or agreeing to grant, an Encumbrance over the whole, or a substantial part, of the DuluxGroup Group's business or property;
- (i) a member of the DuluxGroup Group resolving that it be wound up;
- (j) a liquidator or provisional liquidator of a member of the DuluxGroup Group being appointed;
- (k) a court making an order for the winding up of a member of the DuluxGroup Group;
- (l) an administrator of a member of the DuluxGroup Group being appointed under the Corporations Act;
- (m) a member of the DuluxGroup Group making any change to its constitution;
- (n) a member of the DuluxGroup Group executing a deed of company arrangement or other compromise or arrangement with its creditors or any class of them; or
- (o) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the DuluxGroup Group's business or property,

but does not include any occurrence:

- (p) required or permitted by this deed or the Scheme or any transaction contemplated by either;
- (q) Fairly Disclosed in the Disclosure Materials or Disclosure Letter (which, for the avoidance of doubt, includes undertaking actions and matters Fairly Disclosed in the Disclosure Materials or Disclosure Letter which DuluxGroup is considering or proposing to undertake);
- (r) would have been disclosed to Nippon Paint had Nippon Paint conducted the searches referred to in clause 6.1(b)(viii);
- (s) which relates to incurring or payment of any Transaction Costs, provided that DuluxGroup must use all reasonable endeavours not to materially exceed the estimated amount of Transaction Costs specified in the Disclosure Letter;
- (t) within the actual knowledge of Nippon Paint as at the date of this deed, which for these purposes will be taken to include and be limited to the facts, matters and circumstances of which the following individuals are actually aware as at the date of this deed:
 - (i) Tetsushi Tado;
 - (ii) Yasuyuki Matsumoto;
 - (iii) Hiroshi Takenaka;
 - (iv) Yutaka Kagami; and
 - (v) Yasumasa Okamoto; or
- (u) approved, consented to or requested by Nippon Paint or any of its Related Bodies Corporate.

Schedule 5 Share Rights and Incentive Shares

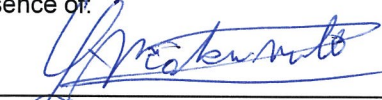
Share Rights	Incentive Shares
38,189 vested Share Rights granted under the Employee Equity Plan	LTEIP 5,999,303 unvested LTEIP Shares 1,540,756 vested LTEIP Shares
	Employee Equity Plan 80,620 vested Incentive Shares
	Sacrifice Share Acquisition Plan 101,866 vested Incentive Shares
	Employee Share Investment Plan 413,390 vested Incentive Shares

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Execution page

Executed as a deed.

Signed by Representative Director of **Nippon Paint Holdings Co., Ltd. (1200-01-072994)** in the presence of:



Signature of witness

YASUYUKI MATSUMOTO

Name of witness (print)



Signature of Representative Director

TEISUSHI TADO

Name of Representative Director (print)

Signed, sealed and delivered by **DuluxGroup Limited (ACN 133 404 065)** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Name of director (print)

Signature of director/secretary

Name of director/secretary (print)

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For personal use only

Execution page

Executed as a deed.

Signed by Representative Director of **Nippon Paint Holdings Co., Ltd. (1200-01-072994)** in the presence of:

Signature of witness

Signature of Representative Director

Name of witness (print)

Name of Representative Director (print)

Signed, sealed and delivered by **DuluxGroup Limited (ACN 133 404 065)** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:



Signature of director

Signature of director/secretary

PATRICK HOULIHAN

STUART BOXER

Name of director (print)

Name of director/secretary (print)

Attachment A Indicative Timetable

Event	Date
Draft Scheme Booklet provided to ASIC	Late May 2019
First Court Hearing	Mid-late June 2019
Scheme Meeting	Late July 2019
Second Court Hearing	Early August 2019
Effective Date	Early August 2019
Record Date	Early to mid August 2019
Implementation Date	Mid August 2019

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Scheme of arrangement

DuluxGroup Limited

Each person registered as a holder of DuluxGroup Shares as at the Record Date

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Parties

- 1 **DuluxGroup Limited (ACN 133 404 065)** of 1956 Dandenong Road, Clayton 3168 Victoria, Australia (**DuluxGroup**)
- 2 Each DuluxGroup Shareholder as at the Record Date (**Scheme Shareholders**)

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

2 Preliminary matters

- (a) DuluxGroup is an Australian public company limited by shares and DuluxGroup has been admitted to the official list of ASX.
 - (b) As at 17 April 2019 there were 389,250,252 DuluxGroup Shares quoted for trading on ASX. Bidder is a Japanese public company limited by shares.
 - (c) If this Scheme becomes Effective:
 - (i) in consideration for the transfer of each Scheme Share to Bidder (or Nominee), Bidder will provide or procure the provision of the Scheme Consideration in accordance with this Scheme and the Deed Poll; and
 - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder (or Nominee) and DuluxGroup will enter the name of Bidder (or Nominee) in the Share Register in respect of all the Scheme Shares.
 - (d) Bidder and DuluxGroup have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
 - (e) This Scheme attributes actions to Bidder but does not itself impose any obligations on Bidder to perform those actions. By executing the Deed Poll, Bidder has agreed to perform the actions attributed to it under this Scheme.
-

3 Conditions

3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until and unless the following conditions precedent are satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8:00am on the Second Court Date;

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- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms before 8:00am on the Second Court Date;
 - (c) this Scheme is approved by the Court having made orders under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to DuluxGroup and Bidder (each acting reasonably);
 - (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to DuluxGroup and Bidder (each acting reasonably) are satisfied or waived; and
 - (e) the order of the Court made under section 411(4)(b) of the Corporations Act approving this Scheme becomes Effective.

3.2 Certificates

- (a) Each of DuluxGroup and Bidder will provide a certificate (or such other evidence as the Court may require) to the Court at the Second Court Hearing confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived (but in the case of the condition precedent in clause 3.1(a) only in respect of those conditions in clause 3.1 of the Implementation Deed (other than the condition relating to Court approval of the Scheme) included for that party's benefit).
- (b) The certificates given by DuluxGroup and Bidder under clause 3.2(a) constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.

3.3 End Date

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless Bidder and DuluxGroup otherwise agree in writing (and if required, as approved by the Court).

4 Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

DuluxGroup must lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme as soon as possible and in any event before 5:00pm on the Business Day immediately following the day on which it receives such office copy or such later date as DuluxGroup and Bidder agree in writing.

4.2 Transfer of Scheme Shares

Subject to the Scheme becoming Effective, on the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2(a) and DuluxGroup having provided Bidder with written confirmation thereof, all of the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder (or Nominee), without the need for any further act by any Scheme Shareholder (other

than acts performed by DuluxGroup (or any of DuluxGroup's directors, officers, or secretaries) as attorney and agent for Scheme Shareholders under clause 8.5), by:

- (i) DuluxGroup, in its capacity as the attorney and agent of the Scheme Shareholders, duly completing and executing the Scheme Transfer on behalf of the Scheme Shareholders (as transferors), and delivering it to Bidder; and
 - (ii) Bidder (or Nominee) duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to DuluxGroup for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), DuluxGroup must enter, or procure the entry of, the name of Bidder (or Nominee) in the Share Register in respect of all the Scheme Shares transferred to Bidder (or Nominee) in accordance with this Scheme.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share.

5.2 Provision of Scheme Consideration

- (a) Bidder's obligation to provide the Scheme Consideration will be satisfied by Bidder depositing (or procuring the deposit) in cleared funds an amount equal to the Aggregate Scheme Consideration into the Trust Account before 12 noon on the date that is two Business Days before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) (**Accrued Interest**) will accrue for the benefit of Bidder), such amount to be held by DuluxGroup on trust for the purposes of paying the Scheme Consideration to Scheme Shareholders in accordance with clause 5.2(b).
- (b) Subject to Bidder providing the Aggregate Scheme Consideration in accordance with clause 5.2(a), DuluxGroup must, on the Implementation Date and from the Trust Account, pay (or procure the payment to each Scheme Shareholder of) the proportion of the Aggregate Scheme Consideration attributable to that Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by DuluxGroup:
 - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from DuluxGroup by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or, in the case of joint holders, in accordance with clause 5.3).
- (c) In the event that:
 - (i) either:
 - (A) a Scheme Shareholder does not have a Registered Address; or

- (B) DuluxGroup as the trustee for the Scheme Shareholders believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,

and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or

- (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.5(a),

DuluxGroup as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of DuluxGroup (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic), DuluxGroup must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). DuluxGroup must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) To the extent that there is a surplus in the amount held by DuluxGroup as the trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by DuluxGroup as the trustee for the Scheme Shareholders to Bidder following the satisfaction of DuluxGroup's obligations as the trustee for the Scheme Shareholders under this clause 5.2.
- (e) DuluxGroup must pay any Accrued Interest to any account nominated by Bidder following satisfaction of DuluxGroup's obligations under clause 5.2(b).

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

5.4 Fractional entitlements and splitting

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.

5.5 Cancellation and re-issue of cheques

- (a) DuluxGroup may cancel a cheque issued under this clause 5 if the cheque:
- (i) is returned to DuluxGroup; or
- (ii) has not been presented for payment within six months after the date on which the cheque was sent.

- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to DuluxGroup (or the Share Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.5(a) must be reissued.

5.6 Unclaimed monies

- (a) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

5.7 Orders of a court or Government Agency

If written notice is given to DuluxGroup (or the Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by DuluxGroup in accordance with this clause 5, then DuluxGroup will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents DuluxGroup from making a payment to a particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, DuluxGroup will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by DuluxGroup will constitute full discharge of DuluxGroup's obligations under clause 5.2(b) with respect to the amount so paid or retained until, in the case of clause 5.7(b), it is no longer required to be retained.

6 Dealings in DuluxGroup Shares

6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in DuluxGroup Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant DuluxGroup Shares at or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received at or before the Record Date at the place where the Share Register is kept,

and DuluxGroup must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

6.2 Share Register

- (a) DuluxGroup must register registrable transmission applications or transfers of DuluxGroup Shares in accordance with clause 6.1(b) at or before the Record Date, provided that nothing in this clause 6.2(a) requires DuluxGroup to register a transfer that would result in a DuluxGroup Shareholder holding a parcel of DuluxGroup Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and DuluxGroup will be entitled to disregard any such disposal, purported disposal or agreement.
- (c) For the purpose of determining entitlements to the Scheme Consideration, DuluxGroup must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for DuluxGroup Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the DuluxGroup Shares relating to that entry.
- (e) As soon as possible after the Record Date, and in any event within 2 Business Days after the Record Date, DuluxGroup will ensure that details of the names, Registered Addresses and holdings of DuluxGroup Shares for each Scheme Shareholder as shown in the Share Register as at the Record Date are available to Bidder.

7 Quotation of DuluxGroup Shares

- (a) DuluxGroup will apply to ASX to suspend trading in DuluxGroup Shares with effect from the close of trading on the Effective Date.
- (b) DuluxGroup will apply:
 - (i) for termination of the official quotation of DuluxGroup Shares on the ASX; and
 - (ii) to have itself removed from the official list of ASX,in each case with effect on and from the close of trading on the trading day immediately following the Implementation Date.

8 General Scheme provisions

8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) DuluxGroup may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented (provided that Bidder may not unreasonably withhold or delay its consent to any alterations or conditions made or imposed by the Court); and

- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel for DuluxGroup has consented.

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
- (i) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those shares (other than any right to receive the Special Dividend(s) (if any)) in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
 - (iii) agrees to, on the direction of the Bidder, destroy any share certificates relating to their Scheme Shares; and
 - (iv) acknowledges that this Scheme binds DuluxGroup and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting),
- without the need for any further act by the Scheme Shareholder.
- (b) Each Scheme Shareholder is taken to have warranted to Bidder, and appointed and authorised DuluxGroup as its attorney and agent to warrant to Bidder, that:
- (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
 - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (B) restrictions on transfer of any kind;
 - (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights attaching to those Scheme Shares; and
 - (iii) as at the Record Date, they have no existing right to be issued any other Scheme Shares or any other form of DuluxGroup securities,
- and DuluxGroup shall give such warranties to Bidder as agent and attorney of each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
- (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (ii) restrictions on transfer of any kind.
- (b) On the provision of the Scheme Consideration in the manner contemplated by clause 5, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by DuluxGroup of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered

in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

8.4 Appointment of sole proxy

On the provision of the Scheme Consideration in the manner contemplated by clause 5 and until DuluxGroup registers Bidder as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) must not attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.5 Authority given to DuluxGroup

On and from the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints DuluxGroup and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purposes of:

- (a) enforcing the Deed Poll against Bidder; and
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing the Scheme Transfer,

and DuluxGroup accepts such appointment. DuluxGroup, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.6 Binding effect of this Scheme

This Scheme binds DuluxGroup and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of DuluxGroup.

9 General

9.1 Stamp duty

Bidder will:

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- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll; and
 - (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 Consent

Each Scheme Shareholder consents to DuluxGroup doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to DuluxGroup, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at DuluxGroup's registered office or at the office of the Share Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a DuluxGroup Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.4 Governing law and jurisdiction

- (a) This Scheme and any dispute arising out of or in connection with the subject matters of this document is governed by the laws in force in Victoria, Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.4(b)(i).

Schedule 1 Dictionary

1 Dictionary

Accrued Interest has the meaning given in clause 5.2(a).

Aggregate Scheme Consideration means the Scheme Consideration multiplied by the total number of Scheme Shares.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it.

Bidder means Nippon Paint Holdings Co., Ltd. 1200-01-072994 of 2-1-2 Oyodo Kita, Kita-ku, Osaka 531-8511 Japan.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia or Tokyo, Japan.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

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

Court means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act as agreed in writing between Bidder and DuluxGroup.

Deed Poll means the deed poll dated [●] 2019 under which, among other things, Bidder covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of this Scheme.

DuluxGroup Share means a fully paid ordinary share in the capital of DuluxGroup.

DuluxGroup Shareholder means a holder of one or more DuluxGroup Shares, as shown in the Share Register.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which this Scheme becomes Effective.

End Date means the date that is 5 months after the date of the Implementation Deed or such later date as Bidder and DuluxGroup agree in writing.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel).

Implementation Date means the fifth Business Day after the Record Date or such other day as Bidder and DuluxGroup agree in writing.

Implementation Deed means the scheme implementation deed dated 17 April 2019 between Bidder and DuluxGroup relating to, among other things, the implementation of this Scheme.

Listing Rules means the official listing rules of ASX.

Nominee means a wholly-owned subsidiary of the Bidder nominated in writing by the Bidder in accordance with the Implementation Deed to acquire the DuluxGroup Shares under the Scheme.

Record Date means 7:00pm on the fifth Business Day after the Effective Date of the Scheme, or such other time and date as Bidder and DuluxGroup agree in writing.

Registered Address means, in relation to a Scheme Shareholder, the address shown in the Share Register as at the Record Date.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Scheme means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and DuluxGroup.

Scheme Consideration means, in respect of each Scheme Share, \$9.80 subject to, and as adjusted in accordance with, clauses 5.1(d) and 5.2(d) of the Implementation Deed (if applicable).

Scheme Meeting means the meeting of DuluxGroup Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Share means a DuluxGroup Share held by a Scheme Shareholder as at the Record Date.

Scheme Shareholder means a DuluxGroup Shareholder as at the Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

Separate Account has the meaning given in clause 5.2(c).

Share Register means the register of DuluxGroup Shareholders maintained in accordance with the Corporations Act.

Share Registry means Computershare Investor Services Pty Limited (ACN 078 279 277).

Special Dividend has the meaning given in clause 5.2(a) of the Implementation Deed.

Trust Account means an Australian dollar denominated trust account which is operated by DuluxGroup as trustee for the Scheme Shareholders.

2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (a) The words “include”, “including”, “such as”, “for example” and similar expressions are not words of limitation and do not limit what else might be included.
- (e) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
 - (vi) this Scheme includes all schedules to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a reference to a date or time is to that date or time in Melbourne, Victoria, Australia;
 - (x) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (xi) a monetary amount is in Australian dollars.
- (b) An agreement on the part of two or more persons binds them jointly and severally.
- (c) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (d) In determining the time of day where relevant to this Scheme, the time of day is:
 - (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or

- (ii) for any other purpose under this Scheme, the time of day in the place where the party required to perform an obligation is located.
- (e) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

For personal use only

Deed poll

Nippon Paint Holdings Co., Ltd.

In favour of each person registered as a holder of DuluxGroup Shares as at the Record Date

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Parties

- 1 **Nippon Paint Holdings Co., Ltd. 1200-01-072994** of 2-1-2 Oyodo Kita, Kita-ku, Osaka 531-8511 Japan (**Bidder**)

In favour of each person registered as a holder of DuluxGroup Shares as at the Record Date (**Scheme Shareholders**)

Background

- A Bidder and DuluxGroup have entered into the Implementation Deed, under which Bidder has agreed to:
- (i) enter into this deed poll; and
 - (ii) pay or procure the provision of the Scheme Consideration, in consideration for the acquisition of all of the Scheme Shares by Bidder (or Nominee), in accordance with the Scheme;
- B Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to undertake the actions attributed to Bidder under the Scheme.
-

1 Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires:

- (a) **DuluxGroup** means DuluxGroup Limited (ACN 133 404 065) of 1956 Dandenong Road, Clayton 3168 Victoria, Australia.
- (b) **First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing DuluxGroup to convene the Scheme Meeting is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard);
- (c) **Implementation Deed** means the scheme implementation deed dated 17 April 2019 between Bidder and DuluxGroup relating to (among other things) the implementation of this Scheme;
- (d) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Scheme Shareholders and DuluxGroup, in the form of Attachment A to this deed poll, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act (and agreed to by the Bidder and DuluxGroup, each acting reasonably); and
- (e) terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to 'deed poll'.

1.3 Nature of deed poll

Bidder acknowledges and agrees that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with the terms of this deed poll even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints DuluxGroup and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder.

2 Conditions

2.1 Conditions

The obligations of Bidder under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Bidder under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date, unless Bidder and DuluxGroup otherwise agree in writing.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2:

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations under clause 6.1; and
- (b) in addition and without prejudice to any other available rights, powers or remedies available to the Scheme Shareholders, each Scheme Shareholder retains the rights they have against Bidder in respect of any breach of this deed poll which occurs before it was terminated.

3 Scheme obligations

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit or procure the deposit of the Aggregate Scheme Consideration into the Trust Account in cleared funds before 12 noon on the date that is two Business Days before the Implementation Date;
- (b) provide or procure the provision of the Scheme Consideration in accordance with the terms of the Scheme; and
- (c) undertake or procure the undertaking of all other actions attributed to Bidder under the Scheme, as if named as a party to the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

4 Warranties

Bidder represents and warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of Japan;

- For personal use only
- (b) it has the legal right and full corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
 - (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll and to carry out the transactions contemplated by this deed poll;
 - (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
 - (e) this deed poll is valid and binding on it and is enforceable against it in accordance with the terms of this deed poll; and
 - (f) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.
-

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Bidder has fully performed its obligations under this deed poll; or
 - (b) the earlier termination of this deed poll under clause 2.2.
-

6 General

6.1 Stamp duty

Bidder must:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

6.2 Notices

- (a) Any notice or other communication to Bidder in connection with this deed poll must be:
 - (i) in legible writing in English;
 - (ii) signed by the person making the communication or that person's duly authorised agent; and
 - (iii) given by hand delivery, pre-paid post or email in accordance with the details set out below:

Attention: Yasumasa Okamoto (Legal Manager)

Address: 2-1-2 Oyodo Kita, Kita-ku, Osaka 531-8511 Japan

Email: nphdlegal.okamoto@nipponpaint.jp

with a copy (for information purposes only) to Masaki Noda at m_noda@jurists.co.jp and Andrew Walker at awalker@claytonutz.com

- (b) Subject to clause 6.2(c), any notice or other communication given in accordance with clause 6.2(a) will be deemed to have been duly given as follows:
- (i) if delivered by hand, on delivery;
 - (ii) if sent by pre-paid post, on receipt; and
 - (iii) if sent by email:
 - (A) when the sender receives an email from the recipient confirming receipt of the email; or
 - (B) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,whichever happens first.
- (c) Any notice or other communication that, pursuant to clause 6.2(b), would be deemed to be given:
- (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
 - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day,
- where references to time are to time in the place the recipient is located.

6.3 Cumulative rights

The rights, powers and remedies of Bidder and each Scheme Shareholder under this deed poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this deed poll.

6.4 Waiver

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of:
 - (i) any right, power or remedy provided by law or under this deed poll; or
 - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

6.5 Variation

A provision of this deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by DuluxGroup in writing; or

- (b) if on or after the First Court Date, the variation is agreed to by DuluxGroup in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Bidder must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

6.6 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in Victoria, Australia.
- (b) Bidder irrevocably:
- (i) submits to the non-exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.6(b)(i).

6.7 Assignment

- (a) The rights created by this deed poll are personal to Bidder and each Scheme Shareholder, and must not be dealt with at law or in equity.
- (b) Any purported dealing in contravention of clause 6.7(a) is invalid.

6.8 Further action

Bidder must, at its own expense, promptly do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

Execution page

Executed as a deed.

Signed, sealed and delivered by **Nippon Paint Holdings Co., Ltd. 1200-01-072994** in the presence of:

Signature of witness

Signature of Representative Director

Name of witness (print)

Name of Representative Director (print)

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