

DEED OF AMENDMENT

amongst

FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED

and

THE SCOTTISH MINISTERS

and

CLYDE BLOWERS CAPITAL FUND III LP



BRODIES^{LLP}

Brodies LLP

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DX GW 11

(Ref: PDB/NRB/FER274.46)

For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this agreement is delivered on February 2019.

AGREEMENT

amongst

PARTIES

- (1) **FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED**, incorporated and registered in Scotland with company number SC485103 whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride G74 5PA (the "**Company**")
- (2) **THE SCOTTISH MINISTERS** in terms of the Scotland Act 1998, Victoria Quay, Leith, Edinburgh EH6 6QQ ("**SM**")

and

- (3) **CLYDE BLOWERS CAPITAL FUND III LP**, a limited partnership registered in Scotland (registered number SL008995) and having its registered office at Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA acting by its general partner, Clyde Blowers Capital GP III L.P., a limited partnership registered in Scotland (registered number SL008841), whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, G74 5PA, acting by its general partner, Clyde Blowers Capital GP III Limited (registered number SC392285), whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA ("**CBC**").

Each may be referred to as a "**party**" or collectively as the "**parties**".

BACKGROUND

- (A) The parties entered into a subscription and shareholders' agreement dated 25 June 2018 in relation to the Company ("**Subscription and Shareholders' Agreement**").
- (B) As at the date of this deed: (i) CBC holds 2,580,001 A ordinary shares of £1.00 each in the capital of the Company; (ii) SM holds 1,700,000 Warrants (as defined in the Subscription and Shareholders' Agreement); (iii) SM has a right to be issued with Warrants, which give SM the right to be issued with Warrant Shares (as defined in the Subscription and Shareholders' Agreement), in accordance with the terms of the Loan Agreement and the Warrant Instrument (both as defined in the Subscription and Shareholders' Agreement); and (iv) CBC has a right to be issued with share warrants, which give CBC the right to be issued with up to 300,000 A Ordinary Shares, in accordance with the terms of the CBC Loan Agreement and CBC Warrant Instrument (both as defined below).
- (C) The Articles (as defined in the Subscription and Shareholders' Agreement) were adopted by special resolution of the Company on 25 June 2018.

- (D) The Warrant Instrument (as defined in the Subscription and Shareholders' Agreement) was entered into by the Company on 25 June 2018.
- (E) Since the date of the Subscription and Shareholders' Agreement, the parties have renegotiated certain of its terms. The parties have therefore agreed to enter into this deed to waive certain breaches of the Subscription and Shareholders' Agreement and to amend the Subscription and Shareholders' Agreement, Articles and Warrant Instrument on the terms set out herein.

AGREED TERMS

1 Interpretation

Words, expressions and defined terms used in this deed shall, unless the context expressly requires otherwise, have the meaning given to them in the Subscription and Shareholders' Agreement.

2 Acknowledgement and Waiver

2.1 [Redacted]

2.2 [Redacted]

[Redacted]

[Redacted]

3 Amendment to the Subscription and Shareholders' Agreement

The parties hereby agree that, with effect from the date of this deed, the Subscription and Shareholders' Agreement shall be amended as follows:

3.1 In clause 1.1:

3.1.1 the following definitions shall be deleted:-

3.1.1.1 "Condition";

3.1.1.2 "Realised Profits";

3.1.1.3 "Relevant Proceeds";

- 3.1.1.4 "Tranche Payment Trigger Event"
- 3.1.1.5 "Tranche Subscription Amount"; and
- 3.1.1.6 "Utilisation Request".
- 3.1.2 the definition of "First Tranche Completion(s)" shall be deleted and replaced with the following new definition:
- “**First Tranche Completion**” means the completion of the advancement of the CBC Loan by CBC to the Company in accordance with clause 3.1.”*
- 3.1.3 the definition of "Loan Agreement" shall be deleted and replaced with the following new definition:
- “**Loan Agreement**” means the agreement between SM, FMEL and the Company in respect of the Loan dated 25 June 2018 as amended by the terms of the Amended Loan Agreement, and as otherwise supplemented, amended or varied from time to time with the prior written consent of SM.”*
- 3.1.4 the definition of "Second Tranche Longstop Date" shall be deleted and replaced with the following new definition:
- “**Second Tranche Longstop Date**” means 25 June 2020;”*
- 3.1.5 the following new definitions shall be inserted:
- 3.1.5.1 *“**Amended Loan Agreement**” means the agreement between SM, FMEL and the Company in respect of the Loan dated 1 February 2019.”*
- 3.1.5.2 *“**CBC Loan**” means the loan to be made by CBC to the Company pursuant to the CBC Loan Agreement.”*
- 3.1.5.3 *“**CBC Loan Agreement**” means the agreement between CBC and the Company in respect of the CBC Loan dated 1 February 2019, and as otherwise supplemented, amended or varied from time to time with the prior consent of SM.”*
- 3.1.5.4 *“**CBC Warrant**” means an equity warrant to subscribe for one CBC Warrant Share, on the terms and subject to the conditions of the CBC Warrant Instrument.”*
- 3.1.5.5 *“**CBC Warrant Instrument**” means the equity warrant instrument entered into by the Company on 1 February 2019, as supplemented, amended or varied from time to time with the prior written consent of SM.”*

3.1.5.6 *“CBC Warrant Shares” means the A Shares which CBC has the right to be issued upon exercise of the CBC Warrants pursuant to the terms of the CBC Warrant Instrument and the CBC Loan Agreement.”*

3.2 In clause 3:

3.2.1 clauses 3.1, 3.2, 3.3, 3.5, 3.6 and 3.7 shall be deleted;

3.2.2 [REDACTED]

[REDACTED]

3.2.3 [REDACTED]

[REDACTED]

3.2.4 [REDACTED]

3.3 In clause 4:

3.3.1 [REDACTED]

3.3.2 [REDACTED]

3.3.3 [REDACTED]

3.3.4 clause 4.3 shall be deleted.

3.4 In clause 9.3:

3.4.1 [REDACTED]

3.4.2 clause 9.3.2 shall be deleted;

3.4.3 [Redacted]

[Redacted]

3.4.4 [Redacted]

[Redacted]

3.5 Clause 10.7 shall be amended by inserting the words "or clause 10.9" after the words "or clause 10.8" in the first line.

3.6 Clause 10.8 shall be amended by replacing the words "clause 9.3.5" in the second line with the words "clause 9.3.4".

3.7 [Redacted]

[Redacted]

[Redacted]

[Redacted]

3.8 [Redacted]

[Redacted]

[REDACTED]

3.9 Clause 18.1 shall be deleted and replaced with the following:-

"18.1 No person may assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights under this agreement or any document referred to in it without the prior written consent of all the parties (such consent not to be unreasonably conditioned, withheld or delayed) provided that:

18.1.1 SM may assign its rights under this agreement to a party to whom it transfers all its Warrant Shares; and

18.1.2 CBC may assign its rights under this agreement to a party to whom it simultaneously transfers (i) all of its shares in accordance with the Articles; (ii) CBC's interest under the CBC Loan Agreement; and (iii) the CBC Warrants (in respect of CBC Warrants issued to CBC as at that date);

in each case, provided that any such assignee agrees to bound by the provisions of this agreement pursuant to a Deed of Adherence and in accordance with the provisions of article 16.5 of the Articles."

4 Adoption of new Articles

CBC hereby agrees that, on or around the date of this deed, it shall vote in favour of a resolution to adopt new Articles in the agreed form.

5 Amendment to the Warrant Instrument

The parties hereby agree that, with effect from the date of this deed, the Warrant Instrument shall be amended as follows:

5.1 In clause 1.1:

5.1.1 the definition of "Loan Agreement" shall be deleted and replaced with the following new definition:

***"Loan Agreement** means the agreement between the Initial Warrantholder, FMEL and the Company dated 25 June 2018 as amended by the terms of the Amended Loan Agreement, and as otherwise supplemented, amended or varied from time to time."*

- 5.1.2 the definition of "**Share Sale**" shall be deleted and replaced with the following new definition:

"Share Sale means the sale of any of the shares in the capital of the Company and/or FMEL (in one transaction or as a series of transactions) which will result in the purchaser of those shares and persons Acting in Concert with him together acquiring a Controlling Interest in the Company and/or FMEL except where this arises as a result of (i) the issuance of shares in the capital of the Company to the Warrantholder(s) (or to CBC pursuant to the CBC Warrant Instrument) or their Permitted Transferees (as such term is defined in the Articles) in accordance with the terms of this Instrument (or the CBC Warrant Instrument, as appropriate), or (ii) the transfer of shares in the capital of the Company and/or FMEL to CBC Permitted Transferees."

- 5.1.3 the definition of "Shareholders' Agreement" shall be deleted and replaced with the following new definition:

"Shareholders' Agreement means the subscription and shareholders' agreement among the Company, the Initial Warrantholder and the Investor dated 25 June 2018 as supplemented, amended or varied from time to time."

- 5.1.4 the following new definitions shall be inserted:

5.1.4.1 *"Amended Loan Agreement" means the agreement between the Initial Warrantholder, FMEL and the Company dated 1 February 2019."*

5.1.4.2 *"CBC" means Clyde Blowers Capital Fund III LP, a limited partnership registered in Scotland (registered number SL008995) and having its registered office at Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA.*

5.1.4.3 *"CBC Warrant Instrument" means the equity warrant instrument entered into by the Company on 1 February 2019, as supplemented, amended or varied from time to time with the prior written consent of SM."*

- 5.2 Clause 6.1.3 shall be amended by inserting the words "*, or pursuant to the CBC Warrant Instrument;*" at the end of that clause.

6 Costs

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this deed, shall be borne by the party that incurred the costs.

7 Third party rights

Unless it expressly states otherwise, this deed does not confer on any person other than the parties any right to enforce or otherwise invoke any term of this agreement under the Contract (Third Party Rights) (Scotland) Act 2017 (but this does not affect any right or remedy of any person which exists or is available apart from that Act).

8 Severance

- 8.1 If any provision of this deed (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 8.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

9 Counterparts

This deed may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

10 Governing law and jurisdiction

- 10.1 This deed and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of Scotland.
- 10.2 The parties irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this deed typewritten on this and the preceding 7 pages is executed as follows:-

For FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED

signature of witness

full name of above (print)

110 QUEEN STREET
GLASGOW

G1 3BX
address of witness

signature of director

full name of above (print)

1ST FEBRUARY 2019
date of signing

GLASGOW
place of signing

For THE SCOTTISH MINISTERS

[Redacted]

signature of witness

[Redacted]

full name of above (print)

CAPELLA, 60 YORK STREET,
GLASGOW, G2 8JX

address of witness

[Redacted]

signature of authorised signatory

Mary McAllan

full name of above (print)

01/02/2019

date of signing

GLASGOW

place of signing

For CLYDE BLOWERS CAPITAL FUND III LP, acting by its general partner CLYDE BLOWERS CAPITAL GP III LP, acting by its general partner CLYDE BLOWERS CAPITAL GP III LIMITED

signature of witness

signature of director

full name of above (print)

full name of above (print)

date of signing

address of witness

place of signing

For THE SCOTTISH MINISTERS

signature of witness

signature of authorised signatory

full name of above (print)

full name of above (print)

date of signing

address of witness

place of signing

For CLYDE BLOWERS CAPITAL FUND III LP, acting by its general partner CLYDE BLOWERS CAPITAL GP III LP, acting by its general partner CLYDE BLOWERS CAPITAL GP III LIMITED.

signature of witness

signature of director

full name of above (print)

full name of above (print)

110 DRUGEN STREET
GLASGOW

1st FEBRUARY 2019

G1 3BX
address of witness

GLASGOW
place of signing