

AMENDMENT LETTER
relative to
The Scottish Ministers
funding to
Ferguson Marine Engineering Limited

MACROBERTS

LLP



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E: DGeconomy@gov.scot

Ferguson Marine Engineering Limited
3 Redwood Crescent
East Kilbride
Glasgow, G2 5PA
(the "**Borrower**")

Your ref:
Our ref:

25 June 2018

Dear Sirs

£15,000,000 loan agreement dated 6 September 2017 between the Scottish Ministers and the Borrower as amended from time to time (the "Loan Agreement")

We refer to the Loan Agreement and are writing to you to set out the terms on which the Loan Agreement is to be amended.

Background

1. Background

The Scottish Ministers and the Borrower have agreed to amend the Loan Agreement to, *inter alia*, extend the final repayment date on the terms set forth in this letter.

2. Definitions

Words and expressions with capitalised initials used in this letter shall, except where the context otherwise requires, have the meanings ascribed to them in the Loan Agreement.

3. Amendments

The Loan Agreement shall be amended as follows:-

3.1 Definitions and Interpretation

3.1.1 the existing definition of "Business Plan" in Clause 1.1 (*Definitions and Interpretation*) of the Loan Agreement shall be deleted and replaced with the following new definition of "Business Plan" as follows:-

"Business Plan means the plan of the Group for the 5 year period to December 2022 describing the Group's proposed business activities and objectives as presented to the Scottish Ministers and PWC on 7 February 2018, and setting out the plan to deliver objectives, as updated in accordance with the Holdings Loan Agreement."

- 3.1.2 the existing definition of "Group" in Clause 1.1 (Definitions and Interpretation) of the Loan Agreement shall be deleted and replaced with the following new definition of "Group" as follows:-

"Group means the Borrower, Holdings and MacKellar";

- 3.1.3 the existing definition of "Final Repayment Date" in Clause 1.1 (*Definitions and Interpretation*) of the Loan Agreement shall be deleted and replaced with the following new definition of "Final Repayment Date", as follows:-

"Final Repayment Date means, subject to the terms of this Agreement, the first to occur of (i) 1 June 2021 or (ii) provided such date is not prior to the [REDACTED]

- 3.1.4 the existing definition of "Finance Document" in Clause 1.1 (*Definitions and Interpretation*) of the Loan Agreement shall be deleted and replaced with the following new definition of "Finance Document", as follows:-

"Finance Document means this Agreement, the Intercreditor Deed, any "Finance Documents" under and as defined in the Holdings Facility Agreement, and each other document agreed by Scottish Ministers and the Borrower to be a Finance Document from time to time."

- 3.1.5 the existing definition of "Permitted Financial Indebtedness" in Clause 1.1 (*Definitions and Interpretation*) of the Loan Agreement shall be deleted and replaced with the following new definition of " Permitted Financial Indebtedness", as follows:-

"Permitted Financial Indebtedness means (1) finance leases entered into with third parties up to a value of £100,000 per annum, (2) foreign exchange contracts in respect of current or anticipated exposures for cost or income identified in the Business Plan, (3) any other financing arrangements existing at the date of the Second Amendment Letter including the HCCI guarantee arrangements disclosed to the Scottish Ministers, and (4) loans made available by the Scottish Ministers, (5) facilities for the provision of contract guarantees and related indemnities arising in the ordinary course of business, (6) any intra-group indebtedness as between, or on-lending from, Holdings to FMEL as contemplated under Clause 2 (Amount, Nature and Purpose of the Loan) of the Holdings Facility Agreement, (7) any third party bond or guarantee facility required to support the award of a material new order for the Group (provided that the Scottish Ministers have consented to such further indebtedness, such consent not to be unreasonably withheld or delayed) and (8) any third party debt finance which supports the delivery of the Business Plan (provided that the Scottish Ministers have consented to such further indebtedness, such consent not to be unreasonably withheld or delayed);"

- 3.1.6 the existing definition of "Permitted Security" in Clause 1.1 (*Definitions and Interpretation*) of the Loan Agreement shall be deleted and replaced with the following new definition of " Permitted Security", as follows:-

"Permitted Security Rights means (i) any Security created by the Group, or any member of it, with the prior written approval of the Scottish Ministers (ii) all existing security arrangements entered into by the Group at the date of the Second Amendment Letter (iii) security arrangements to be entered into by the Group pursuant to a third party bond or guarantee facility required to support the award of a material new order (provided that the Scottish Ministers have consented to such further security, such consent not to be unreasonably withheld or delayed) and (iv) security arrangements to be entered into by the Group pursuant to any third party debt finance which supports the delivery of the Business Plan (provided that the Scottish Ministers have consented to such further security, such consent not to be unreasonably withheld

or delayed), with the Scottish Ministers' Security ranking and enforcement provisions to reflect so far as appropriate those agreed with HCC (and, for the avoidance of doubt, ranking behind any Security granted by any member of the Group in favour of the third party debt finance, bond or guarantee facility provider) provided always that, in each case, the Scottish Ministers have consented to such ranking arrangements, such consent not to be unreasonably withheld or delayed;"

3.1.7 The following new definitions shall be inserted where appropriate in Clause 1.1 (*Definitions and Interpretation*) of the Loan Agreement:-

"Acting in Concert" has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

Articles means the articles of association of Holdings from time to time;

Business Disposal means the disposal by the Borrower of the whole or a substantial part of the business, assets and undertaking of the Borrower operated from the Property;

CBC Permitted Transferees means any of the entities which are transferees described in article 17.2 of the Articles which have been adopted or which will be adopted by Holdings on or around the date of the Second Amendment Letter;

Controlling Interest means an interest in shares giving to the holder or holders control of the Borrower within the meaning of section 1124 of the Corporation Tax Act 2010;

Exit means a Share Sale, Business Disposal or Listing;

Holdings means Ferguson Marine Engineering (Holdings) Limited, a company incorporated in Scotland (Company No. SC485103) and whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA;

Holdings Loan Agreement means the loan agreement to be entered into between Holdings and the Scottish Ministers on or around the date of the Second Amendment Letter;

Intercreditor Deed means the intercreditor deed entered into among the Borrower, Holdings, MacKellar, the Scottish Ministers and HCC International Insurance Company Plc on or around the date of the Second Amendment Letter;

Intra-Group Loan means the intragroup loan made between Holdings as lender and the Borrower as borrower on or around the date of the Second Amendment Letter.

Listing means the admission of all or any of the shares in the capital of the Borrower, and/or Holdings or securities representing those shares (including without limitation depository interests, American depository receipts, American depository shares and/or other instruments) on NASDAQ or the Official List of the United Kingdom Listing Authority or the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);

MacKellar means MacKellar Sub-Sea Limited (no SC486910);

Property means subjects at Newark Works, Castle Road, Port Glasgow, PA14 5NG;

Relevant Exit Date means the later of [REDACTED]

[REDACTED]

Second Amendment Letter means the amendment letter issued by the Scottish Ministers on [] June 2018 and accepted by the Borrower on [] June 2018;

Share Sale means the sale of any of the shares in the capital of the Borrower and/or Holdings (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 Borrower and/or Holdings, except where this arises as a result of (i) in the case of the Holdings, the issuance of shares in the capital of Holdings to the Warranholder(s) or their Permitted Transferees (as such term is defined in the Articles) in accordance with the terms of the Warrant Instrument, or (ii) the transfer of shares in the capital of the Borrower and/or Holdings to CBC Permitted Transferees;

Subscription Rights means the rights of the Warranholder(s) to subscribe for Warrant Shares pursuant to the Warrant Instrument;

Warrant means any warrant of Holdings constituted pursuant to the Warrant Instrument;

Warranholder means, in relation to a Warrant, the person whose name appears in the register of Warranholders maintained by Holdings as the holder of the Warrant;

Warrant Instrument means the equity warrant instrument, in Acceptable Form, to be entered into by Holdings in respect of the issue of Warrants;

3.2 Interest

Clause 5 (*Interest*) shall be amended to include the following new clause 5.4, as follows:

"5.4 Notwithstanding Clauses 5.1 to 5.3 (inclusive) of this Agreement, the Borrower and the Scottish Ministers [REDACTED]

[REDACTED]

taking into consideration, among other factors, any material new vessel orders secured by FMEL, the overall financial position of the Group and the delivery of the Business Plan, the value attributable to Security granted by the Group companies and/or the Warrants issued by Holdings pursuant to and in accordance with the Holdings Loan Agreement and the Warrant Instrument). [REDACTED]

3.3 Repayment and Prepayment

Clause 6 (*Repayment and Prepayment*) shall be amended to include the following new clause 6.5, as follows:

"6.5 Notwithstanding any other provision of this Agreement, if an Exit occurs at any time prior to the exercise by the Scottish Ministers of all of their Subscription Rights and prior to the Relevant Exit Date, then:-

- 6.5.1 the Borrower shall promptly notify the Scottish Ministers upon becoming aware of that event;
- 6.5.2 the Scottish Ministers shall not be obliged to fund a Utilisation; and
- 6.5.3 the Scottish Ministers, in their sole discretion, may by notice in writing to the Borrower cancel the Facility and the Holdings Facility Agreement and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility and the Holdings Facility Agreement shall be cancelled and all such outstanding amounts shall become automatically due and payable.

3.4 Undertakings by the Borrower

Clause 10.24 (*Undertakings by the Borrower*) shall be deleted and replaced with the following new clause 10.24 as follows:

"10.24 not to repay, pre-pay, redeem, purchase or otherwise satisfy in any way or make payment of or in respect of any shareholder or directors loans (excluding any repayment or prepayment made by the Borrower to the Holdings pursuant to Clause 3.2 of the Intra-Group Loan)."

4. Representations

The Repeating Representations are deemed to be repeated by the Borrower as at the date of acceptance by the Borrower of the terms of this letter.

5. Effect of this Letter

- 5.1 This letter is supplemental to the Loan Agreement and the terms of the Loan Agreement shall continue in full force and effect in accordance with the terms thereof, as amended by this letter.
- 5.2 All and any references in the Loan Agreement to "this Agreement" (or similar phrases) shall, with effect from the date of signing this letter, be deemed to be references to the Loan Agreement as amended by the terms of this letter.

6. Miscellaneous

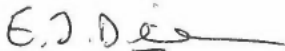
- 6.1 No delay or omission on the part of the Scottish Ministers in exercising any of its rights, powers, remedies or privileges under this letter shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, remedy or privilege preclude any other or further exercise, thereof or the exercise of any other right, power, remedy or privilege.
- 6.2 If at any time any provision of this letter is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provision of this letter nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

7. Law

This letter will be governed by and construed according to the laws of Scotland and the Borrower submit to the jurisdiction of the Scottish Courts.

Please indicate your acceptance of the terms of this letter by executing and returning the enclosed copy.

Yours faithfully



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For and on behalf of
The Scottish Ministers

We hereby acknowledge and agree to the terms of the foregoing letter including, without limitation, the amendments to the Loan Agreement effected thereby.

For and on behalf of
Ferguson Marine Engineering Limited:

.....
Director/Secretary/Witness

Full name:

.....
Director

Full name:

Date:

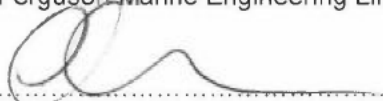
LIZ DITCHBURN

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot


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We hereby acknowledge and agree to the terms of the foregoing letter including, without limitation, the amendments to the Loan Agreement effected thereby.

For and on behalf of
Ferguson Marine Engineering Limited:


.....
Director/Secretary/Witness

Full name: RACHEL O'REILLY


.....
Director

Full name: GERARD MARSHALL

Date: 22 JUNE 2018