

DATED

06 03 2015

---

---

**SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT**

**relating to Fletcher Plant Limited**

---

DATE dd/mm

2015

## **PARTIES**

- (1) Trustees of Richard Fletcher (Metals) Directors Pension Fund of Daws House, 33-35 Daws Lane, London. NW7 4SD, (the **"Investor"**);
- (2) Fletcher Plant Limited whose registered office is situate at Clement Works Clement Street Sheffield S9 5EA (Company No. 08466840) (the **"Company"**).

## **INTRODUCTION**

- (A) The Company is a company limited by shares, brief particulars of which are set out in schedule 2.
- (B) Details of the legal and beneficial ownership of the share capital of the Company are set out in parts 1 and 2 of schedule 3.
- (C) The Investor wishes to subscribe for shares in the capital of the Company on and subject to the terms of this agreement.

## **AGREED TERMS**

### **1. Definitions**

In this agreement, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

**"Accounts"** means the audited balance sheet and profit and loss account of the Company or, if the Company has any subsidiaries, a consolidation of the audited balance sheets and profit and loss accounts of the Company and the Subsidiaries for the period ended on the Accounts Date in the agreed form;

**"Accounts Date"** means 30<sup>th</sup> June;

**"Act"** means the Companies Act 2006;

**"Board"** means the board of directors of the Company as constituted from time to time;

**"Business"** as more fully described in the Business Plan

**"Business Day"** means a day on which the English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

**"Business Plan"** means the business plan for the Company in the agreed form;

**"Claim(s)"** means any claim(s) for breach of any Warranty;

**"Completion"** means completion by the parties of their respective obligations in accordance with clause 4 (Completion);

**"Completion Conditions"** means the conditions set out in Part 1 schedule 4;

**"Completion Date"** means the date upon which Completion occurs;

**"CTA 2010"** means the Corporation Tax Act 2010;

**"Data Protection Legislation"** means the Data Protection Acts of 1984 and 1998, and the EU Data Protection Directive 95/46/EC;

**"Data Protection Principles"** has the same meaning as the term "Data Protection Principles" under the Data Protection Legislation;

**"Disclosed"** means fairly disclosed to the Investors in the Disclosure Letter with sufficient explanation and detail to enable the Investors to identify clearly the nature, scope and full implications of the matters disclosed;

**"Disclosure Letter"** means the letter in the agreed form from the Warrantors to the Investors executed and delivered immediately before Completion;

**"Encumbrance"** means any mortgage, charge, security interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

**"Environment"** means air, water, land, buildings structures, enclosures, or other constructions, flora, fauna and humans;

**"Environmental Consents"** means any permit, licence, authorisation, approval or consent required under or agreement made pursuant to any Environmental Law;

**"Environmental Law"** means all laws (including common laws, statutes and subordinate legislation), treaties, conventions, regulations, codes of practice or guidance notes concerning the Environment or health and safety which are or were binding upon the Company;

**"Preferred Shares"** shall have the same meaning as Class B shares

**"Financial Year"** means a financial year as determined in accordance with section 390 of the Act;

**"First Tranche Shares"** means the £300,000 shares subscribed by the Investor pursuant to clause 3.1;

**"Further Disclosure Letter"** means the letter in the agreed form from the Warrantors to the Investors executed and delivered immediately before Second Completion

**"HMRC"** means HM Revenue & Customs;

**"Incidental Amount"** means the amount of a Material of Environmental Concern present in the Environment which is insufficient to cause harm or have a deleterious effect on the Environment;

**"Intellectual Property"** means copyrights, trade and service marks, including the Trade Marks, trade names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how, registered designs, design rights, patents, utility models, semiconductor topographies, all rights of whatsoever nature in computer software and data, all rights of privacy and all intangible rights and privileges of a nature similar or allied to

any of the foregoing, in every case in any part of the world and whether or not registered; and including all granted registrations and all applications for registration in respect of any of the same;

**"Investor"** means the person, whose names and addresses are set out in part 1 of schedule 1 and any other person to whom any of them transfer their shares and who becomes a party as an "Investor" by signing a Deed of Adherence in accordance with clause 14.2 and is named therein as an **"Investor"**;

**"IPO"** means the admission of all or any of the Shares or securities representing those shares (including without limitation depository interests, American depository receipts, American depository shares and/or other instruments) to or the grant of permission by any like authority for the same to be traded or quoted on the Nasdaq National Stock Market of the NASDAQ OMX Group Inc. or on the Official List of the United Kingdom Listing Authority or on 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);

**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003;

**"Key Employee"** means any employee who is or was during the Period employed by any Group Company:

- (a) at management grade; or
- (b) in a senior capacity;

**"Listing Rules"** means the listing rules made by the United Kingdom Listing Authority as the competent authority pursuant to Part VI of the Financial Services and Markets Act 2000 as amended from time to time and including any guidance or guidance manual issued by the United Kingdom Listing Authority from time to time relating to or connected with the listing rules;

**"Management Accounts"** means the management accounts of the Company.

**"Materials of Environmental Concern"** means any substance which may cause harm to or have a deleterious effect on the Environment;

**"New Shares"** means the shares subscribed by the Investors pursuant to clause 3.1 at a price of £1.00 per share

**"Ordinary Shares"** means ordinary shares of £1.00 each in the capital of the Company having the rights set out in the New Articles;

**"Period"** means the period of two years immediately preceding the Termination Date;

**"Permitted Transferees"** shall have the same meaning as set out in the New Articles

**"Personal Data"** has the same meaning as the term **"personal data"** under the Data Protection Legislation;

**"Properties"** means the properties described in schedule 8;

**"Remuneration Committee"** means the remuneration committee of the Board appointed in accordance with clause 9.8 and schedule 11;

**"Resolutions"** means the resolutions in agreed form to be passed by the Company.

**"Sale"** means a Share Sale or an Asset Sale, both as defined in the New Articles;

**"Service Agreements"** means the agreements in the agreed form to be entered into between the Company and each of the Managers;

**"Shareholders"** means each of the Managers and the Investors and the other members of the Company from time to time who are a party to this agreement;

**"Shares"** means the Ordinary Shares and the Class B Preference Shares;

**"Social Obligations"** means:

- (a) any common or statutory law, regulation, directive, code of practice or other law in any jurisdiction relating to the relationship between any Group Company and its employees, any potential employee and any trade unions and/or the health and safety of its employees; and
- (b) any agreements or arrangements between any Group Company and its employees and/or any trade union or other organisation which represents some or all of its employees;

**"Taxation"** means all forms of taxation, duties, rates, levies, contributions, withholdings, deductions, liabilities to account, charges and imposts whether imposed in the United Kingdom or elsewhere in the world;

**"Taxing Authority"** means HM Revenue & Customs and any other governmental, state, federal, provincial, local governmental or municipal authority, body or official whether of the United Kingdom or elsewhere in the world;

**"Termination Date"** means the date upon which the Manager concerned ceases to be a director or employee of or a consultant to, the Company whichever is the latest;

**"Trade Marks"** means the trade and service marks and applications, together with associated logos, owned by the Company, full details of which are set out in the Disclosure Letter;

**"VAT"** means value added tax chargeable under the VATA or under any legislation replacing it or under any legislation which the VATA replaced and further means value added tax at the rate in force when the relevant supply is made and any tax of a similar nature which is introduced in substitution for such value added tax;

**"VATA"** means the Value Added Tax Act 1994;

**"Warranties"** means the warranties given pursuant to clause 6 (references to a particular representation or warranty being to a statement set out in schedule 5); and

**"Warrantors"** means the Company and each of the Managers.

## **2. Interpretation**

- 2.1 Words and expressions which are defined in the New Articles shall have the meanings attributed to them therein when used in this agreement unless otherwise defined or the context otherwise requires.
- 2.2 Words and expressions which are defined in the Act (to the extent applicable) shall have the meanings attributed to them therein when used in this agreement unless otherwise defined or the context otherwise requires.

- 2.3 The clause and paragraph headings and the table of contents used in this agreement are inserted for ease of reference only and shall not affect construction.
- 2.4 References to an Investor Director shall include any alternate appointed to act in his place from time to time.
- 2.5 References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.
- 2.6 References to documents "**in the agreed form**" are to documents in terms agreed on behalf of the Company and the Investors and initialled on behalf of each such party for the purposes of identification only.
- 2.7 References to those of the parties that are individuals include their respective legal personal representatives.
- 2.8 References to "**writing**" or "**written**" includes any other non-transitory form of visible reproduction of words.
- 2.9 References to the word "**include**" or "**including**" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "**other**" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things.
- 2.10 Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof.
- 2.11 References to statutory provisions, enactments or EC Directives shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive (whether before or after the date of this agreement), to any previous enactment which has been replaced or amended and to any regulation, instrument or order or other subordinate legislation made under such provision, enactment or EC Directive unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this agreement.
- 2.12 Section 1122 of the CTA 2010 shall apply to determine whether one person is connected with another for the purposes of this agreement.
- 2.13 References in clauses 6 (Warranties), 9 (The Board and the Investor Directors), 10 (Information rights), 11 (Consent matters), 12 (Business undertakings), 15 (Restrictive covenants), 16 (Confidentiality), schedule 5 (Warranties), schedule 6 (Consent matters) and schedule 7 (Undertakings) to the Company and the Board shall include each of the subsidiaries of the Company and the directors for the time being of those subsidiaries respectively.

### **3. Subscriptions**

- 3.1 Subject to the provisions of clause 4, the Investors apply for the allotment and issue to them at Completion of the following shares as set out in the table below and the Company accepts such applications:

<b>Investor</b>	<b>No. of Shares</b>	<b>Total subscription monies (£)</b>
Richard Fletcher (Metals) Directors Pension Fund	CLASS B PREFERENCE SHARES	£300,000

- 3.2 Each of the parties (other than the Company) agrees to vote in favour of the Resolutions and hereby irrevocably waives or procures the waiver of all or any pre-emption rights he or his nominees may have pursuant to the Company's articles of association or otherwise so as to enable the issue of any shares in the capital of the Company contemplated by this agreement to proceed free of any such pre-emption rights.

#### **4. Completion**

- 4.1 The following events shall occur on the Completion Date:

- (a) each Investor shall pay the sum set out against its name in column 3 of the table in clause 3.1 above by electronic funds transfer to the bank account of the Company and payment made in accordance with this clause 4.1 shall constitute a good discharge for the Investor of its obligations under this clause 4.1:
- (b) a meeting of the Board shall be held at which the Company shall:
  - (i) issue the New Shares credited as fully paid to the Investors and enter their names in the register of members in respect thereof;
  - (ii) execute and deliver to the Investors certificates for the New Shares;
  - (iii) pass any such other resolutions as may be required to carry out the obligations of the Company under this agreement.

- 4.2 The Company shall notify the Investors as soon as it or they becomes aware of any fact or circumstance which has caused or will or is likely to cause any of the conditions listed in part 2 of schedule 4 not to be satisfied.

#### **5. Warranties**

- 5.1 The Warrantors acknowledge that the Investor has been induced to enter into this agreement and to subscribe for the New Shares on the basis of and in reliance upon the Warranties amongst other things.
- 5.2 The Warrantors jointly and severally warrant to the Investor that each and every Warranty is true, accurate and not misleading at the date of this agreement subject only to:
- (a) the matters Disclosed in the Disclosure Letter; and
  - (b) any exceptions expressly provided for under this agreement.

- 5.3 Each Warranty is a separate and independent warranty, and, save as otherwise expressly provided, no Warranty shall be limited by reference to any other Warranty or by the other terms of this agreement and the Disclosure Letter.
- 5.4 The rights and remedies of the Investor in respect of any breach of any of the Warranties shall not be affected by Completion, any investigation made by or on behalf of the Investors into the affairs of the Company or any other event or matter whatsoever which otherwise might have affected such rights and remedies except a specific and duly authorised written waiver or release.
- 5.5 The Investor shall have the right to claim in respect of any breach of the Warranties either against the Company or against any of the other Warrantors and/or partly against the Company and partly against any of the other Warrantors and in the case of a Claim against the Company no counterclaim or right of contribution or indemnity shall lie against the other Warrantors and in the case of a Claim against any or all of the other Warrantors no counterclaim or right of contribution or indemnity shall lie by any of them against the Company or any other Warrantor.
- 5.6 Where any Warranty is qualified by the expression "**so far as the Warrantors are aware**" or words having similar effect, such Warranty shall be deemed to include a statement that such awareness means both the actual knowledge of the Managers and also such knowledge which the Managers would have had if they had made reasonable enquiry of all relevant persons.
- 5.7 The Investor agree among themselves that the following provisions shall (unless they subsequently agree amongst themselves to the contrary acting by way of an Investor Majority) apply in relation to the enforcement of any of the obligations of the Warrantors owed to the Investors under this agreement (the "**Obligations**"):
- (a) no claim in respect of any breach of the Obligations shall be brought by any of the Investor without the prior written consent of an Investor Majority provided that all Investor have been informed of the breach of the Obligations and consulted prior to an Investor Majority decision being made;
  - (b) the costs incurred by any Investor in bringing a claim in respect of any breach of the Obligations shall be borne by all of the Investors proportionately to their holding of shares in the capital of the Company at that time; and
  - (c) any damages obtained as a result of any claim in respect of any breach of the Obligations will, after deduction of all costs and expenses, be divided amongst the Investor in such proportions.

Any Investor shall be entitled to waive the Obligations owed to it at any time prior to the issue of proceedings with the consequence that it shall not be liable to bear its proportion of the costs referred to in (b) above (which costs per Investor shall increase rateably for the remaining Investors) nor entitled to any of the damages referred to in (c) above.

## **6. Limitations on Warranty Claims**

- 6.1 The limitations set out in this clause shall not apply to any Claim which is:
- (a) the consequence of fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of the Warrantors.



Failure to give reasonable details of any Claims shall not prevent the Investors from proceeding with any Claim otherwise made properly under this agreement.

6.2 The aggregate liability of the Warrantors in respect of all and any Claims shall be limited to:

- (a) in the case of the Company, an amount equal to the aggregate amount subscribed by the Investor pursuant to this agreement; and

together with the proper and reasonable costs of recovery in respect of any Claim incurred by or on behalf of the Investors.

6.3 The Warrantors shall not be liable in respect of any Claim unless the aggregate liability for all Claims exceeds £10,000 in which case the Warrantors shall be liable for the entire amount and not merely the excess.

6.4 No liability of the Warrantors in respect of any breach of any Warranty shall arise:

- (a) if such breach occurs by reason of any matter which would not have arisen but for the coming into force of any legislation not in force at the Completion Date or by reason of any change to HM Revenue & Customs' practice occurring after the Completion Date;
- (b) to the extent that specific allowance, provision or reserve has been made in the Accounts or in the Management Accounts specifically in respect of the matter to which such liability relates;
- (c) to the extent that such breach or claim arises as a result of any change in the accounting bases or policies in accordance with which the Company values its assets or calculate its liabilities or any other change in accounting practice from the treatment or application of the same used in preparing the Accounts (save to the extent that such changes are required to correct errors or because relevant generally accepted accounting principles have not been complied with).

6.5 The Investors shall be entitled to make a Claim in respect of liability which is contingent or unascertained provided that written notice of the Claim (giving as far as practical the amount and details of the Claim) is given to the Warrantors before the expiry of the relevant periods specified in clause 7.2.

6.6 The Warrantors shall not be liable for any Claim if the alleged breach which is the subject of the Claim is capable of remedy and is remedied to the reasonable satisfaction of the Investors by the Warrantors within 30 days of the date on which the notice in clause 7.2 above is received by the Warrantors.

6.7 Nothing in this agreement shall prejudice each Investor's duty under common law to mitigate any loss or liability which is the subject of a Claim.

## **7. Information rights**

7.1 The Company shall for each prepare management accounts (in a form approved by an Investor Majority) with comparisons to budgets and containing trading and profit and loss accounts, balance sheets, cash flow statements and forecasts and shall deliver them to the Investors within 21 days after the end of each quarter. The first management accounts shall be delivered to the Investors within 21 days after the end of the month in which Completion takes place.

- 7.2 The Company shall prepare a schedule of the Company's issued share capital and any warrants and/or options to acquire shares and/or convertible securities, broken down by shareholder, option holder, warrant holder and convertible securities holder (as appropriate) and including the percentage of the fully diluted issue share capital held by each holder and shall deliver such share capital schedule to the Investors within 21 days after the end of each quarter in the Company's financial year.
- 7.3 The Company shall provide the Investors promptly with such other information concerning the Company and its business as the Investors may reasonably require from time to time.
- 7.4 [If the Company does not comply with its obligations in clauses the Investors, the Investor Directors and a firm of accountants nominated by the Investors at the Company's expense will be entitled to attend the Company's premises to examine the books and accounts of the Company and to discuss the Company's affairs, finances and accounts with its directors, officers and senior employees.
- 7.5 Each Investor shall be at liberty from time to time to make such disclosure:
- (a) to its partners, trustees, shareholders, unitholders and other participants and/or to any Member of the same Group as an Investor for the purposes of, but not limited to, reviewing existing investments and investment proposals;
  - (b) to any lender to the Company and/or to any shareholder of the Company;
  - (c) about the Company as shall be required by law and any regulatory authority to which any Investor is subject;
  - (d) to the Company's auditors and/or any other professional advisers of the Company;

in relation to the business affairs and financial position of the Company as it may in its reasonable discretion think fit.

## **8. Sale or IPO**

- 8.1 It is the parties' intention to effect a Sale or IPO as soon as practicable and in any event within five years of the Completion Date. The parties agree to keep one another informed of all and any developments which might lead to any Sale or IPO.
- 8.2 Each party acknowledges and agrees that upon a Sale or IPO the Investors shall not be obliged to give warranties or indemnities (except a warranty as to title to the shares held by such Investor).
- 8.3 If a Sale or IPO is not achieved by the fifth anniversary of Completion then the Company shall if required by an Investor Majority at the Company's expense appoint a professional adviser (to be agreed with the prior sanction of an Investor Director Consent) to report on exit opportunities and strategy and copies of such reports shall be made available to the Investors (at the Company's cost).
- 8.4 It is hereby agreed by the parties that, on an IPO, the Shareholders shall:
- (a) to the extent required by:
    - (i) the Listing Rules; or

- (ii) any equivalent requirements of any other recognised investment exchange (as defined in the Financial Services and Markets Act 2000),

retain such number of their shares in the Company held at the time of the IPO for such period after IPO as is required by the Listing Rules or the rules and requirements of the relevant recognised investment exchange; and

- (b) have regard to the recommendation of the Company's brokers on a IPO in determining their respective sale of shares upon the Company's IPO and shall make such determination with a view to ensuring the success of the IPO.

## **9. Further issue and transfer of shares**

The Deed of Adherence shall be in favour of the Company, the Investors and any other parties to this agreement and shall be delivered to the Company at its registered office and to the Investors. No share transfer or issue of shares shall be registered unless such Deed of Adherence has been delivered.

## **10. Confidentiality**

Each of the parties agrees to keep secret and confidential and not to use disclose or divulge to any third party or to enable or cause any person to become aware of (except for the purposes of the Company's business) any confidential information relating to the Company including but not limited to Intellectual Property (whether owned or licensed by the Company), lists of customers, reports, notes, memoranda and all other documentary records pertaining to the Company or its business affairs, finances, suppliers, customers or contractual or other arrangements but excluding any information which is in the public domain (otherwise than through the wrongful disclosure of any party) or which they are required to disclose by law or by the rules of any regulatory body to which the Company is subject.

## **11. Announcements**

- 11.1 The parties shall not make any public announcement or issue a press release or respond to any enquiry from the press or other media concerning or relating to this agreement or its subject matter (including but not limited to the Investors' investment in the Company) or any ancillary matter, save for that reported to HMRC in respect of matters concerning pension business

## **12. Costs and expenses**

- 12.1 The Company shall pay at Completion all legal, accounting and due diligence fees and disbursements of the Investors in relation to the negotiation, preparation, execution, performance and implementation of this agreement and each document referred to in it and other agreements forming part of the transaction.
- 12.2 The Company shall bear their own costs and disbursements incurred in the negotiations leading up to and in the preparation of this agreement and of matters incidental to this agreement.

**13. Effect of ceasing to hold shares**

A party shall cease to be a party to this agreement for the purpose of receiving benefits and enforcing his rights with effect from the date he ceases to hold or beneficially own any shares in the capital of the Company (but without prejudice to any benefits and rights enjoyed prior to such cessation).

**14. Cumulative remedies**

The rights, powers, privileges and remedies conferred upon the Investor in this agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

**15. Waiver**

The express or implied waiver by any party to this agreement of any of its rights or remedies arising under this agreement or by law shall not constitute a continuing waiver of the right or remedy waived or a waiver of any other right or remedy.

**16. Entire agreement**

- 16.1 This agreement and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this agreement.
- 16.2 Each of the parties acknowledges and agrees that it has not entered into this agreement in reliance on any statement or representation of any person (whether a party to this agreement or not) other than as expressly incorporated in this agreement and the documents referred to or incorporated in this agreement.
- 16.3 Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this agreement or not) and upon which it has relied in entering into this agreement.
- 16.4 Each of the parties acknowledges and agrees that the only cause of action available to it under the terms of this agreement and the documents referred to or incorporated in this agreement shall be for breach of contract.
- 16.5 Nothing contained in this agreement or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.

**17. Variation**

Any variation of this agreement is valid only if it is in writing and signed by the Company and by shareholders of the Company holding between them at least 90 per cent of the issued share capital of the Company, in which event such change shall be binding against all of the parties hereto provided that if such change would impose any new

obligations on a party or increase any existing obligation, the consent of the affected party to such change shall be specifically required.

**18. No partnership**

Nothing in this agreement is intended to or shall be construed as establishing or implying any partnership of any kind between the parties.

**19. Assignment and transfer**

19.1 This agreement is personal to the parties and no party shall:

- (a) assign any of its rights under this agreement;
- (b) transfer any of its obligations under this agreement;
- (c) sub-contract or delegate any of its obligations under this agreement; or
- (d) charge or deal in any other manner with this agreement or any of its rights or obligations.

but an Investor may assign the whole or part of any of its rights in this agreement to any person who has received a transfer of shares in the capital of the Company from such Investor and has executed a Deed of Adherence.

**20. Rights of third parties**

20.1 This agreement does not confer any rights on any person or party (other than the parties to this agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.2 The general partner or a trustee of an Investor or the management company authorised from time to time to act on behalf of an Investor or another person or persons nominated by an Investor, shall be entitled to enforce all of the rights and benefits under this agreement at all times as if party to this agreement.

**21. Conflict between agreements**

Subject to any applicable law, in the event of any ambiguity or conflict between this agreement, the terms of this agreement shall prevail as between the Shareholders and in such event the Shareholders shall procure such modification to the New Articles as shall be necessary.

**22. Counterparts**

This agreement may be executed in any number of counterparts, each of which shall constitute an original, and all the counterparts shall together constitute one and the same agreement.

## **23. Notices**

23.1 Any communication and/or information to be given in connection with this agreement shall be in writing in English and shall either be delivered by hand or sent by first class post or fax email or in electronic form if so required by the Investors:

- (a) to any company which is a party at its registered office (or such other address as it may notify to the other parties to this agreement for such purpose);
- (b) to any individual who is a party at the address of that individual shown in schedule 1; or
- (c) to the Investor at the principal place of business of the Investor,

(or in each such case such other address as the recipient may notify to the other parties for such purpose).

23.2 A communication sent shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by pre-paid first class post, on the second day after posting; or
- (c) if sent by fax, email or other electronic communication, at the time of completion of transmission by the sender;

except that if a communication is received between 5.30 pm on a Business Day and 9.30 am on the next Business Day, it shall be deemed to have been received at 9:30am on the second of such Business Days.

## **24. Severance**

24.1 If any provision of this agreement is held to be invalid or unenforceable by any judicial or other competent authority, all other provisions of this agreement will remain in full force and effect and will not in any way be impaired.

24.2 If any provision of this agreement is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

## **25. Governing law**

This agreement (and any dispute or claim relating to it or its subject matter [(including non-contractual claims)]) is governed by and is to be construed in accordance with English law.

## **26. Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or issue which may arise out of or in connection with this agreement.

**SCHEDULE 1**

**Part 1**

**The Investors**

<b>Name</b>	<b>Address</b>
Trustees of The Richard Fletcher (Metals) Directors Pension Fund	Daws House, 33-35 Daws Lane, London, NW7 4SD

## **SCHEDULE 2**

### **Part 1**

#### **Particulars of the Company**

Registered number: **08466840**

Registered office: Clement Works  
Clement Street Sheffield S9 5EA

Directors: Richard Paul Fletcher

Accounting reference date: 30/06

Charges: Leumi ABL Limited  
Created 23/12/2014 Charge  
Code 084668400002

Auditors: <name/NONE>

Limit on the number of shares  
that may be allotted (if any):  
NONE

Issued share capital:100  
ORDINARY SHARE



### **SCHEDULE 3**

#### **Part 1**

##### **Members of the Company - pre-Completion**

<b>Member</b>	<b>Number of Ordinary Shares held</b>
Richard Paul Fletcher	100

#### **Part 2**

##### **Members of the Company - post-Completion**

<b>Member</b>	<b>Number of Shares held</b>	<b>Class of Shares held</b>
THE TRUSTEES OF THE Richard Fletcher (Metals) Directors Pension Fund	300,000	CLASS B PREFERENCE SHARES

#### **Part 3**

##### **Members of the Company - Stage 3**

<b>Member</b>	<b>Number of Shares held</b>	<b>Class of Shares held</b>
Richard Paul Fletcher	100	ORDINARY
THE TRUSTEES OF The Richard Fletcher (Metals) Directors Pension Fund	300,000	CLASS B PREFERENCE SHARES

## **SCHEDULE 4**

### **Part 1:**

#### **Conditions to Completion**

1. The passing of directors' and shareholders' resolutions in the agreed form at a duly convened Board meeting and a general meeting or by shareholders' written resolution to:
  - (a) increase the limit on the number of shares that may be allotted by the Company
  - (b) authorise the allotment of the New Shares;
  - (c) waive pre-emption rights in respect of the allotment and issue of the New Shares;  
and
    - Business plan
    - Intellectual property
    - No outstanding liabilities to executives
    - No litigation pending or threatened
    - No breaches of existing or recent contracts
    - Register of members correct.
    - Insurance policies up to date
    - Loans/guarantees
    - Taxation
    - Creditors statement

This agreement has been executed and delivered as a deed on the date shown on the first page.

**SIGNED by**

ACTING BY A DIRECTOR OF Fletcher Plant Limited  
in the presence of:

Signature of witness:

Name of witness:

Address of witness:

255 ATLANTIC ROAD  
SHEFFIELD  
S8 7GE

**SIGNED by**

ACTING FOR THE TRUSTEES  
Of Richard Fletcher (Metals) Directors Pension Fund  
in the presence of:

Signature of witness:

Name of witness:

Address of witness:

255 ATLANTIC ROAD  
SHEFFIELD  
S8 7GE

**SIGNED by**

ACTING FOR THE TRUSTEES  
Of Richard Fletcher (Metals) Directors Pension Fund  
in the presence of:

Signature of witness:

Name of witness:

Address of witness:

255 ATLANTIC ROAD  
SHEFFIELD  
S8 7GE

Fletcher Plant Limited  
Clement Works  
Clement Street  
Sheffield  
S9 5EA

**Company No. 08466840**

## **SHAREHOLDERS' SPECIAL RESOLUTION**

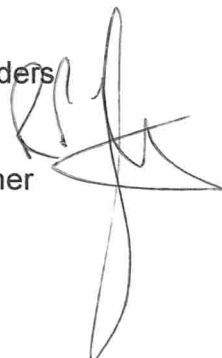
The Articles of Association dated 30<sup>th</sup> June 2013 are in force at the date of this Resolution.

**Section 22.1 of the Articles of Association** empowers the company, subject to the articles, but without prejudice to the rights attached to any existing shares, to issue shares with such rights or restrictions as may be determined by ordinary resolution.

The Shareholders, by special resolution and under the powers conferred on them by the Articles of Association, resolve to dis-apply under 570 Companies Act 2006 in respect of the allotment and issue of new ordinary and preference equity shares.

Signed by all shareholders

Mr Richard Paul Fletcher  
Fletcher Plant Limited

A handwritten signature in black ink, appearing to be 'R. P. Fletcher', written over the printed name of Mr Richard Paul Fletcher.

Fletcher Plant Limited  
Clement Works  
Clement Street  
Sheffield  
S9 5EA

**Company No. 08466840**

## **ORDINARY RESOLUTION**

The Articles of Association dated 30<sup>th</sup> June 2013 are in force at the date of this Resolution.

That the Directors are hereby generally and unconditionally authorised under section 551 of the Companies Act 2006 to exercise all powers of the Company to create new shares as may be determined by ordinary resolution.

The directors have resolved to create a class preference B shares the rights attaching to those shares shall be set out in schedule A. Further that:

- (a) the aggregate of the nominal amount of such B preference shares shall be £1.00 each and every share and the nominal amount of the shares in respect of which such securities confer the right to subscribe or convert, shall not exceed 300,000 ; and
- (b) this authority shall expire on 5 years after the passing of this resolution, save that the Company may before such expiry make an offer or agreement which would or might require shares to be allotted or rights to subscribe for or convert securities into shares to be granted after such expiry and the Directors may allot shares or grant rights to subscribe for or convert securities into shares in pursuance of such an offer or agreement as if the authority conferred hereby had not expired.

Signed:

Mr Richard Paul Fletcher  
DIRECTOR

## **Indicative Term Sheet**

We are pleased to present our proposal for an investment in Fletcher Plant Limited whose registered office is situated at Clement Works, Clement Street, Sheffield, England, S9 5EA (Company No 08466840) (the "**Company**").

### **1. Investment**

- 1.1 The proposed business plan calls for an equity injection of £300,000.
- 1.2 The investment will represent a preference shareholding for the Investors on a fully diluted basis, following an expansion of the share option pool. The current capitalisation of the Company is set out in Part I of Appendix 1 and the capitalisation of the Company after this proposed funding is set out in Part 2 of Appendix 1.
- 1.3 The investment will be made in the form of participating redeemable preferred shares ("**Preferred Shares**") at a price of £1.00 per Preferred Share (the "**Original Issue Price**") the terms of which are set out in Appendix 2.
- 1.4 The investment will be made in full at completion.

The proceeds from the investment must be used for the Company's working capital requirements in particular that set out in the business plan annexed.

### **2. Conditions of investment**

- 2.1 The investment is conditional on negotiation of definitive legal documents, satisfactory completion of due diligence and approval by our Investment Committee.
- 2.2 Satisfactory completion of due diligence will include:
  - (a) Conclusion of our commercial due diligence
  - (b) References from customers and partners
  - (c) Market and technology review by an independent third party
  - (d) Review of current trading and forecasts for the next 6-9 months
  - (e) Review of proposed management service contracts
  - (f) Review of the Director's financial history and current financial situation by our advisors including, either a review of the last set of audited accounts or a review of the last set of unaudited accounts with an accompanying statement from the Company's accountant stating their satisfaction with the proposed investment and it's feasibility, and the latest set of monthly management accounts prior to completion of our investment

- 2.3 We will not underwrite the total funding sought nor guarantee the securing of co-investors.
- 2.4 The investment must comply with the money laundering regulations and rules of the Financial Conduct Authority.

### **3. Terms of investment**

- 3.1 The Company will provide the Investors with customary representations and warranties examples of which are set out in the Appendix and will provide the Investors with customary non-competition, non-solicitation and confidentiality undertakings.
- 3.2 The Board will have a maximum of 2 directors. The composition of the Board on completion will be 2. There will be a minimum of 3 board meetings each year.
- 3.3 The Investors will also have at all times the right to designate a non-voting observer to the Board.
- 3.4 The Company will have an obligation to supply normal financial and operational information about the Company to the Investors.
- 3.5 The Investors and the existing shareholders will have rights to acquire and sell shares as outlined in the attached Appendix.
- 3.6 In the event of an initial public offering of the Company's shares on a UK stock exchange the Investors shall be entitled to full registration rights customary in transactions of this type.
- 3.7 The key members of the management team will be required to sign service agreements which include customary provisions for non-disclosure, non-competition, non-solicitation, confidentiality, assignment of intellectual property rights, and termination.
- 3.8 The Company must obtain key man insurance or equivalent, naming the Company as beneficiary on the life of Richard Paul Fletcher for an amount of £300,000 in a form acceptable to the Investors.

#### **4. Confidentiality**

- 4.1 This Term Sheet is written on the basis that its contents and existence are confidential and will not (except with the agreement in writing of the Investors and the Company or in order to comply with any statutory or stock exchange or other regulatory requirements) be revealed by the Investors, the Company or the Founders to any third party or be the subject of any announcement.
- 4.2 The Investors and the Company agree that they will enter into a non-disclosure agreement before the Investors begin their due diligence investigations.

#### **5. Applicable law**

This letter and any dispute or claim relating to it or its subject matter is governed by English law and on acceptance the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

#### **6. Expiry date**

The Company is requested to confirm their acceptance of the terms of our proposal within 14 days of the date of this letter, failing which our proposal will lapse.

#### **7. Exclusivity**

In consideration of the Investors expending time and professional and other fees (the "**Costs**") in progressing this offer the Company agree and undertake that they will not directly or indirectly until the earlier of the expiry of 21 days from the date of acceptance of the terms of this proposal (the "**Period**") solicit, directly or indirectly, further offers for the purchase and/or subscription of shares in the Company (or any part thereof) or any material part of the business, assets or undertakings of the Company or enter into or continue to seek negotiations with any party other than the Investors in connection with such matters.

The Company agree and undertake to inform the Investors immediately of the identity of any third party who contacts the Company with a view to the sale of any interest in the shares of the Company or any part of the business of the Company.

#### **8. No intention to create legal relations**

This Term Sheet sets out indicative terms on which we would be prepared to make an investment in the Company and will not give rise to any contract between us.

#### **9. Exclusion of representations and warranties**

By accepting this proposal you acknowledge that you have not relied on any representation or warranty on our part or entered into any other agreement with us in connection with the provision of funding by the Investors.



## **Appendix 1**

### **Capitalisation table**

#### **Part 1**

£100

#### **Part 2**

£300,100

## Appendix 2

### Rights attaching to Preferred Shares

1. The price per Preferred Share will be £1.00.
2. The Preferred Shares will carry no voting rights whatsoever.
3. The Preferred Shares will have a preferential cumulative coupon of 8% per annum from 06/03/2015 (the "**Preference Dividend**") to be paid in two equal instalments on the 06/09, and the 06/03 in each year and every year, until such time as the Preferred Shares are redeemed. Any other dividends or distributions will be payable to all shareholders on a pro rata basis.
4. The Preferred Shares, at the discretion of the Company, may be redeemed at any point, the intention being to redeem the Preferred Shares at a time no later than the fifth anniversary of the Completion date.
5. Upon liquidation of the Company, the Preferred Shareholders will receive in preference to all other shareholders an amount in respect of each Preferred Share equal to 2 times the Original Issue Price (the "**Liquidation Preference**"), plus all accrued but unpaid dividends. The holders of Ordinary Shares will also be entitled to recover an amount per Ordinary Share equal to the amount paid up on those Ordinary Shares. To the extent that the Company has assets remaining after the distribution of that amount, the Preferred Shareholders will participate with the holders of Ordinary Shares pro rata to the number of shares held on an as converted basis.
6. Sale of all or substantially all of the assets of the Company or a sale of shares involving a change in control (each, a "**Corporate Transaction**") will be treated in the same way as a liquidation.
7. An IPO that is not a Qualified IPO will be treated in the same way as a liquidation. The Company will issue to each holder of Preferred Shares that number (if any) of Ordinary Shares so that the proportion which the Ordinary Shares held by that shareholder bears to the fully diluted share capital following completion of all such issues and the conversion of the Preferred Shares will be equal to the proportion which the proceeds that that shareholder would have been entitled to receive on a sale on that date would bear to the valuation of the Company at that date.
8. The Preferred Shares may be converted into an equivalent number of Ordinary Shares by their holders at any time.
9. The Preferred Shares will be converted automatically into an equivalent number of Ordinary Shares upon the completion of a firmly underwritten initial public offering ("**IPO**") of Ordinary Shares.
10. On conversion of the Preferred Shares on an IPO all accrued but unpaid dividends on the Preferred Shares must be paid save to the extent that the Company does not have sufficient profits available for distribution to pay the Preference Dividend, in which case the Company will allot to each holder of Preferred Shares by way of capitalisation of reserves such number of Ordinary Shares as shall have an aggregate value equal to the unpaid dividend. Any capitalisation will be at the price of the Ordinary Shares at IPO.

11. The Preferred Shares will have a broad-based weighted-average anti-dilution protection in the case of any new issue of shares at a price below the Original Issue Price (after adjusting for any recapitalisation events) other than share issues which are not subject to pre-emption rights. This anti-dilution protection will operate by the issue of Ordinary Shares at par through a capitalisation of share premium account.
12. If the Company makes a subsequent issue of shares in which the Investors are entitled to participate and an Investor elects not to do so (i.e. does not wish to pay to play) for at least 6% of its allocation that Investor will lose its anti-dilution right in respect of any Preferred Shares it holds.
13. If no Qualified IPO or Corporate Transaction has occurred within 5 years from completion, each of the Preferred Shares will be redeemable at the option of the Company for an amount in cash equal to the Original Issue Price plus all accrued but unpaid dividends.
14. An Investor Majority will have the right exercisable at any time to require the Company to redeem all or some only of the Preferred Shares in issue if a resolution to wind the Company up, to reduce the Company's share capital or to vary the rights of the Preferred Shares is proposed.

## **Appendix 3**

### **Proposed warranties**

The Investors will require the following items to be warranted by the Company:

- Business plan
- Intellectual property
- No outstanding liabilities to executives
- No litigation pending or threatened
- No breaches of existing or recent contracts
- Register of members correct.
- Insurance policies up to date
- Loans/guarantees
- Taxation
- Creditors statement

## **Appendix 4**

### **Conditions of issue and transfer of shares**

1. Investors will have a right of first refusal on any new issue of shares of any class. Investors will have the right to participate with the holders of Ordinary Shares in any new issue of shares of any class pro rata to their holding of shares (determined on an as converted basis).
2. Investors will have a right of first refusal to acquire any Preferred Shares which are proposed to be transferred or sold with any Preferred Shares not taken up in such offer being offered to the holders of Ordinary Shares. Holders of Ordinary Shares will have a right of first refusal to acquire any Ordinary Shares which are proposed to be transferred or sold with any Ordinary Shares not taken up in such offer being offered to the holders of Preferred Shares.
3. All Shareholders will have co-sale rights such that if any Founder or employee has an opportunity to sell any of his shares, the other shareholders must be given the opportunity to sell a pro rata proportion of the number of shares being sold by the Founder or employee on the same terms and at the same price.
4. All Shareholders will have rights such that if any shareholder has an opportunity to sell any or all of its shares, the effect of which would result in a change of control of the Company, the other shareholders must be given the opportunity to sell all of their shares on the same terms and at the same price.
5. If holders of at least 51% of the Preferred Shares and Ordinary Shares agree to sell their shares, there will be drag along rights so that all remaining shareholders and option holders will be required to sell on the same terms, provided that the dragged shareholders will not be required to provide to the purchaser any representations or warranties except as to title or to agree to any other terms.

**Appendix 5**  
**Performance milestones**  
**TO BE PROVIDED**

## **Appendix 6**

### **Undertakings**

1. The Company shall maintain in effect for the benefit of the Company the keyman policies for Richard Paul Fletcher.
2. The Company shall take out insurances satisfactory to the Investors.
3. The Company shall take all such reasonable action as may be required of it by the Investors to protect its assets.
4. All new business opportunities relevant to the Company shall only be taken up through the Company or a wholly owned subsidiary.
5. New employees engaged by the Company shall not bring with them intellectual property belonging to third parties.
6. The Company shall convene and hold at short notice a general meeting of the Company when requested by the Investors.