

PUBLIC VERSION

Application for authorisation regarding levy to fund Paintback scheme

Paintback Ltd and participating paint suppliers

27 November 2020

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1 Applicants for authorisation

1.1 Contact details

Name Paintback Limited (**Paintback**) on behalf of itself and the participating paint suppliers set out in Annexure A.

Address South West Suite
Level 3, 717 Bourke Street Docklands VIC 3008

Telephone 1300 390 380

1.2 Contact person

Name Alistair Newton

Position Partner, Corrs Chambers Westgarth

Telephone [REDACTED]

Email [REDACTED]

1.3 Description of business activities

The Paintback scheme (**Scheme**) is an industry-led, not-for-profit initiative to divert unwanted paint and packaging from sewers, stormwater infrastructure and waterways and other inappropriate disposal pathways, and to research new ways to reuse unwanted paint and packaging.

The Scheme was established in 2016 by:

- DuluxGroup (Australia) Pty Ltd (**DuluxGroup**) (now part of Nippon Paint);
- PPG Industries Australia Pty Limited (**PPG**);
- Henry Haymes Pty Ltd (**Haymes**);
- Resene Paints (Australia) Limited (**Resene**); and
- Valspar Paint (Australia) Pty Ltd (**Valspar**) (now part of The Sherwin-Williams Company) (**Sherwin-Williams**).

Rust-Oleum Australia Pty Limited (**Rust-Oleum**) and Palette Operations Pty Ltd (trading as **Tint Paint**) have since joined the Scheme.

Under the Scheme, consumers and trade painters can take waste paint and packaging to Paintback collection sites or mobile collection events. Paintback's waste services contractors then transport the unwanted paint and packaging from the collection point for proper disposal. They also provide collection points at their depots to supplement the drop-off services provided through local councils.

The Scheme is funded by a levy of up to \$0.15 per litre (plus GST) (**Levy**) on the supply of architectural and decorative paint and woodcare products (together, **A&D paint**).

The Scheme participants are suppliers of A&D paint on a wholesale basis to retailers (who re-supply to domestic and trade customers) and/or on a retail basis through company-owned trade centres or online stores direct to domestic and trade customers. The Levy is applied by Scheme participants to these wholesale and retail supplies.

In the context of the above arrangements, Paintback's main functions are to:

- administer the Scheme by receiving funds raised from the Levy;
- contract with local governments and waste service providers for the collection and safe disposal of waste A&D paint;
- promote education, awareness and information activities for the Scheme;
- monitor, audit and report on the development of the Scheme; and
- administer a substantial program of research into new end-of-life uses for waste A&D paint and collection processes.

1.4 Email address for service

[REDACTED]

2 Details of the proposed conduct

2.1 Participating paint suppliers and key brands

Scheme participants supply A&D paint under the key brands and trademarks listed in **Table 1** below, and together account for over 90% (by volume) of all A&D paint supplied in Australia.

Table 1 – Key Scheme participant brands

Company	Brand(s)
DuluxGroup	Accent, Berger, British Paints, Cabots, Dulux, Feast Watson, Hadrian, Intergrain, Spring, Walpamur, Porters Paints
Haymes	Haymes, Simply Woodcare
PPG	Bristol, Taubmans, White Knight Paints, Manor Hall, Pure Performance, Flood Australia
Resene	Resene
Rust-Oleum	Rust-Oleum, Zinsser
Sherwin-Williams	Solagard, Solver, Wattyl, Estapol, Kill Rust, Pascol
Tint Paint	Tint

2.2 A&D paint products covered by the Levy and Scheme

The Levy applies to A&D paint products supplied in containers of between 1 and 20 litres. Small A&D paint containers of less than 1 litre do not attract the Levy due to the rounding difficulties associated with applying a fixed cents-per-litre levy to containers that are a fraction of a litre (although those containers are still eligible for collection/disposal under the Scheme).

Table 2 below shows “in-Scheme” products (which are able to be collected and disposed under the Scheme, and to which the Levy is applied) and currently “out-of-Scheme” products (which are not). Generally, out-of-Scheme products are currently those that are sold into the industrial sector and/or have particular characteristics (for example, toxicity or corrosiveness) that preclude collection and disposal through the infrastructure used to implement the Scheme (though other disposal pathways may exist). In the future, it is possible that further products (e.g., aerosol paints and tints) supplied by Scheme participants will be included in the Scheme – however, any change would have a marginal impact on total volumes subject to the Levy given that the high-volume A&D paint categories are already covered.

Table 2 – Current in-Scheme A&D paint and out-of-Scheme products

In-Scheme A&D paint	Out-of-Scheme products
<ul style="list-style-type: none"> • Interior and exterior architectural paint – water and solvent based • Deck coatings and floor paints • Primers, undercoats and sealers • Stains and shellacs • Varnishes and urethanes (single component) • Wood coatings (containing no pesticides) 	<ul style="list-style-type: none"> • Industrial maintenance coatings • Original equipment manufacturer (e.g. car manufacturing) and industrial surface coating (shop application) paints and finishes • Aerosol paints • Automotive paints • Anti-fouling coatings • Melamine, metal and rust preventative • Caulking compounds, epoxies, glues or adhesives • Colorants and tints • Resins • Paint thinners, mineral spirits or solvents • Paint additives • Roof patch or repair • Tar-based or bitumen-based products • 2-component coatings • Deck cleaners • Traffic paints • Texture coatings

In-Scheme A&D paint	Out-of-Scheme products
	<ul style="list-style-type: none"> • Bagged renders • Isocyanates • Metal Coatings • Paint equipment • Paint Washings • General waste • All other non-paint liquids and packaging

2.3 Waste Paint Agreement

Each Scheme participants' obligations, including to impose the Levy and remit the proceeds to Paintback, are set out in a Waste Paint Collection and Treatment Scheme Agreement (**Waste Paint Agreement**).

The Waste Paint Agreement provides, among other things, that:

- the Levy will be up to \$0.15 per litre (plus GST) (Paintback's board can alter this amount, provided that it does not exceed any level authorised by the ACCC);
- a confidential audit process will be implemented to ensure that each participant's Levy contributions have been accurately calculated and paid to Paintback; and
- each participant must identify on customer invoices those products that incur the Levy and the total amount of Levy payable.

2.4 Interactions with State and local governments

Paintback has arrangements with various state and local government bodies (including the Sustainability Victoria, Western Australia Local Government Association (**WALGA**), Green Industries South Australia (**GISA**) and NSW Department of Planning, Industry and Environment), and service agreements with around 100 local councils to facilitate implementation of the Scheme at council sites.

2.5 Interactions with A&D paint retailers

Paintback has collaborated with major A&D paint retailers such as Mitre 10, Bunnings and independent paint retailers to promote and educate consumers about the Scheme, including through:

- Paintback-provided online training for retail staff;
- Paintback-provided point of sale materials (e.g., showing how the Scheme works and the nearest collection site(s));
- mobile collection events at selected stores to provide a service as the collection network was developed; and
- collection trials through selected trade centres in NSW.

To facilitate user-pays funding arrangements, Scheme participants recommend to A&D paint retailers that they recover the cost of the Levy by passing it through to retail customers in their resale prices.

2.6 Existing ACCC authorisation

On 1 July 2015, the Australian Paint Manufacturers' Federation Inc. (**APMF**) applied for ACCC authorisation in respect of the Levy on behalf of itself, Paintback (then known as Paint Stewardship Limited) and proposed participating paint suppliers. On 29 October 2015, the ACCC issued a final determination authorising the Levy for a period of five years.

2.7 Conduct for which authorisation is sought and rationale

Authorisation is sought for Paintback and participating A&D paint suppliers to continue to agree and implement the Levy (at up to \$0.15 per litre (plus GST) to continue to fund the Scheme.

The Scheme is open access in that other suppliers of A&D paint are able to join (subject to their agreeing to the same terms as existing participants). Accordingly, authorisation is also sought on behalf of future participating A&D paint suppliers.

Authorisation is not sought for:

- any conduct that would amount to resale price maintenance; or
- any actual agreement with retailers regarding the pass through of the Levy to retail customers.

2.8 Relevant provisions of the *Competition and Consumer Act 2010* (Cth)

The relevant provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**) which could or might apply to the proposed conduct are:

- sections 45AF, 45AG, 45AJ and 45AK in relation to cartels;
- sections 45(1)(a) and (b) in relation to anticompetitive agreements; and
- section 45(1)(c) in relation to concerted practices.

2.9 Term

Authorisation is sought for a ten-year period. Paintback considers this an appropriate timeframe given the long-term nature of the Scheme, the clear and

demonstrated public benefits arising from it, and the fact that no material public detriments of any kind are identifiable.

3 Relevant documents

A copy of Paintback's constitution is set out in **Annexure B** and a sample copy of a Waste Paint Agreement is set out in **Annexure C**.

4 Names or classes of persons who may be directly impacted

The only classes of persons who may be directly impacted by the Levy are A&D paint retailers, a list of which is set out at **Confidential Annexure D**. Users of A&D paint (consumers and trade painters) may be affected by the Levy to the extent that it is passed on in resale prices, or applied to retail sales. Other potentially interested parties include the waste contractors, environmental groups and government bodies that are also set out in Confidential Annexure D.

5 Market information and shares

Broadly, the relevant markets are the wholesale and retail markets for A&D paint products. At the wholesale level, Scheme participants combined account for approximately 90% (by volume) of all A&D paint supplied in Australia.

While Scheme participants are also active at the retail level through company-owned paint stores or online stores, their involvement is relatively limited and most paint supplied at the retail level is supplied by others (e.g., major retailers such as Bunnings and Mitre 10, and independent paint stores).

For the reasons set out in section 8 below, no adverse impacts on competition will result from the conduct to be re-authorised.

6 Counterfactual

In its 2015 final determination, the ACCC concluded that, in the absence of a levy and scheme coordinated amongst A&D paint suppliers:

- a single paint manufacturer would be unlikely to unilaterally impose a levy to fund a scheme (since that would place them at a price disadvantage) and, even if they did, the resulting scheme would focus narrowly on the collection and disposal of A&D paint produced only by that single paint manufacturer;
- various, relatively limited, government programs would continue in their then-current form; and

- significant volumes of waste A&D paint would continue to be improperly stored and disposed of.

These conclusions apply equally in respect of the present application for re-authorisation. In short, in the counterfactual the various public benefits set out in section 7 below would not eventuate.

7 Public benefits

7.1 Overview

Funded by the Levy, the Scheme has realised, and will continue to realise, significant public benefits, including:

- environmental and public health benefits associated with the diversion of waste A&D paint from inappropriate disposal pathways such as sewer/stormwater infrastructure;
- benefits arising from Paintback's R&D program;
- efficiency benefits associated with the economies of scale and addressing externalities; and
- benefits associated with removing the financial burden of waste A&D paint from State and local government.

7.2 Environmental and public health benefits

The improper disposal of A&D paint poses environmental risks, including from contaminants that can seep into soil and water systems. Further, spillages can result in contamination of stockpile storage sites with the potential for health risks if these sites are not properly ventilated.

Accordingly, the key environmental and public health benefits of the Scheme are an increase in the volume of waste A&D paint that is returned for proper disposal. These benefits have been, and will continue to be, achieved by:

- leveraging a large Paintback collection network;
- educating and encouraging retail and trade users to return waste A&D paint for collection and proper disposal; and
- new investments in research to identify more efficient methods for safely disposing of waste A&D paint and containers, and further opportunities for reuse (see section 7.3 below).

(a) *Collection network and volumes*

Paintback has established a system through which approximately 88% of the Australian population has convenient access (i.e., within 20 km in metropolitan areas and 40 km in regional areas) to 160 permanent collection sites (as at 30 June 2020), as well as Paintback-initiated collection events. **Table 3** below shows the distribution of Paintback collection sites and events, and approximate population coverage, by state.

Table 3 – Paintback collection network and population coverage 2019/20

	Permanent Sites	Population Coverage	Sites / Events Coverage
ACT	2	100%	100%
NSW	26	79%	88%
NT	4	72%	72%
QLD	39	88%	88%
SA	11	81%	80%
TAS	18	86%	86%
VIC	42	92%	92%
WA	18	83%	83%
	160	85%	88%

The cumulative total of waste collected by Paintback, as at the end of the 2020 financial year, was over 20,000 tonnes. Paintback estimates that, by the end of the 2021 financial year, it will have collected a total of over 28,000 tonnes (notwithstanding further COVID-19 restrictions). **Table 4** below shows actual and forecast collection volumes, by state.

Table 4 – Paintback actual and forecast collection volumes, by state (tonnes)

	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26
ACT	8	216	277	231	243	243	243	243	246	251
NSW	372	646	1,200	1,789	2,449	2,562	2,647	2,711	2,738	2,793
NT	36	25	34	48	45	47	49	52	52	53
QLD	346	918	1,402	1,595	1,665	1,668	1,672	1,676	1,692	1,726
SA	107	359	412	565	595	598	601	604	610	622
TAS	19	42	71	169	181	183	185	187	189	193
VIC	738	1,501	2,033	2,602	2,153	2,608	2,614	2,620	2,646	2,699
WA	264	594	809	1,093	1,139	1,145	1,150	1,155	1,167	1,190
	1,890	4,302	6,238	8,092	8,470	9,054	9,162	9,248	9,341	9,528

These volumes involve significant increases in collections over various pre-existing state-funded household hazardous waste (HHW) programs. For example, Paintback operates at eighteen sites in Western Australia, eleven of which are in collaboration with the WALGA operated HHW program. In 2019/20, approximately 1,500 tonnes of unwanted paint and packaging was collected by Paintback and WALGA, and 75% of this volume was funded by Paintback. This total volume is a 16% increase from the volume collected in the previous year and 66% higher than in 2016/17.

(b) *Investments in awareness*

A critical component of Paintback's overall strategy to collect increasing volumes of waste paint is effectively communicating the benefits of the scheme to consumers and the trade. To that end, Paintback invests in various marketing and education initiatives to establish the Paintback brand and drive awareness of the scheme and its benefits.

To date, Paintback's communication, marketing and educational initiatives have included:

- a national launch under the "NOW YOU CAN!" tagline, which secured widespread coverage across television, radio and print media reaching audiences of around 11 million people;
- advertising and media, including promoting new collection site openings and mobile collection events, reaching an audience of approximately 42 million in 2019/20, which included an education segment on *The Block*, with supporting broadcast and digital advertising campaign;
- almost 600,000 visits to the Paintback website in 2019/20, with half of these searching on their postcode to find the nearest collection point to them;
- training and educational materials for trade painters, hardware retailers and specialist paint retailers; and
- in-store material at stores located within 10 km of a Paintback collection point.

Market research undertaken by Paintback in April 2020 reports that:

- 15% of DIY painters and 70% of trade painters are now aware of the Scheme;
- Paintback is seen as responsible, trustworthy and innovative; and
- of those who have used the Scheme, 85% of DIY painters and 90% of trade painters are satisfied with it and 90% and 98% respectively say they will use the Scheme again.

(c) *Recovery and diversion from landfill of the materials*

The Scheme aims to divert the materials it collects from landfill and repurpose them to higher-value uses via resource recovery.

To that end, in addition to collection and transport services, Paintback contracts with waste companies and other processors for the treatment and recovery of used paint and packaging.

Packaging represented 1,900 tonnes of the volume collected during 2019/20, and 78% of this packaging was recovered for reuse in Australia. Meanwhile, the paint returned to the Scheme is reused as an alternative to fossil fuel to power cement kilns. Latex paint is repurposed by either extracting the water for use in industrial processes or as a component in composting.

Paintback aims to improve further on its performance, and that is a significant driver for the scheme's Research and Development purpose and capability.

7.3 R&D

A further important aspect of Paintback's work is a significant program of R&D focused on developing solutions to improve paint and packaging resource recovery.

Five R&D projects are underway in association with research institutions, universities and commercial organisations, with a further ten projects being scoped for possible further consideration. Paintback's R&D prioritises water-based paint and plastic packaging, with studies into their use in new products and other materials.

Paintback's R&D projects reflect two main focuses. First, Paintback focuses on overcoming the barriers to resource recovery that current waste treatment processes create, such as in the mass processing of plastic packaging and paint contamination. If these barriers are overcome (technically, environmentally and economically) more materials can be diverted from landfill. Second, Paintback seeks to increase the amount of value realised from collected resources by finding new uses that are further up the resource recovery hierarchy, as compared to treatment to reduce landfill volume or reuse as an alternative fuel. This will increase the net environmental benefit the Scheme achieves by extending the lifecycle of these materials and reducing the consumption of virgin resources.

7.4 Efficiency benefits – externalities

The Levy and Scheme represent an improvement in efficiency in that they better signal to A&D paint manufacturers and users the full cost of their production and consumption. As the ACCC has previously recognised, the Levy is *"likely to lead to greater allocative efficiency as consumers will pay closer to the full social cost of A&D paint and hence more resources will be allocated to its safe disposal. An increase in the price of paint to internalise the social cost of improper disposal may also slightly reduce the amount of paint*

used (and hence produced); however, given the size of the levy, this is unlikely to be significant.” (see Determination A91504, 29 October 2015, p. 7)

7.5 Benefits for government

Further public benefits arise as a result of State and local governments being relieved of the burden of collecting and properly disposing of waste A&D paint. The costs avoided by government will free up scarce funds for other public policies and objectives.

To illustrate, **Table 5** below shows the shift in volumes from the Sustainability Victoria “Detox Your Home” and WALGA HHW programs respectively to the Scheme from 2016/2017 onwards.

Table 5 – Collection volumes comparison (tonnes)

	2016/17	2017/18	2018/19	2019/20
Victoria				
Detox Your Home	1,450	662	284	69
Paintback	738	1,463	2,033	2,602
Total	2,188	2,125	2,317	2,671
Western Australia				
HHW	611	549	443	358
Paintback	264	594	809	1,093
Total	875	1,143	1,252	1,451

8 Public detriment (including likely competitive effects)

Paintback submits that no identifiable detriments will flow from the proposed conduct. In particular:

- there is not, and will not be, any broader agreement between Scheme participants as to their wholesale or retail prices;
- the Levy and Scheme are very limited in scope and do not increase the likelihood of co-ordination between Scheme participants in other aspects of their competitive behaviour or decision-making;
- the Levy will be set to ensure efficient cost recovery over the long term; and
- the Levy is and will remain low relative to paint prices, and therefore wholesale and retail price impacts are, and will be, minimal (and in any

event price increases appropriately address externalities, as noted above, and for that reason do not reflect any public detriment).

9 Contact details of relevant market participants

Please see Annexure A and Confidential Annexure D.

Declaration by applicant(s)

The undersigned declare(s) that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



.....

Signature of authorised person

Solicitor on behalf of Paintback Limited
(Office held)

Alistair Newton
(Name of authorised person)

This 27th day of November 2020.

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Annexure A – Scheme participants

DuluxGroup (Australia) Pty Ltd

Address 1956 Dandenong Road,
Clayton, Victoria, 3168

Telephone [REDACTED]

Contact Mr Pat Jones

Henry Haymes Pty Ltd

Address Waringa Drive,
Wendouree Industrial Park,
Ballarat, Victoria, 3350

Telephone [REDACTED]

Contact Mr Rod Walton

Palette Operations Pty Ltd trading as Tint Paint

Address 49 Argyle Street
Fitzroy, Victoria 3065

Telephone [REDACTED]

Contact Ms Naomi Abiera

PPG Industries Australia Pty Limited

Address McNaughton Road,
Clayton, Victoria, 3168

Telephone [REDACTED]

Contact Ms Anne Neeson

Resene Paints (Australia) Limited

Address 64 Link Drive, Yatala,
Queensland, 4207

Telephone [REDACTED]

Contact Ms Sue Lawler

Rust-Oleum Australia Pty Limited

Address 8 Lakeview Drive
Scoresby Vic 3179

Telephone

Contact Ms Rochelle Taleyratne

The Sherwin-Williams Company

Address Level 3, 2 Burbank Place
Norwest, NSW 2153

Telephone

Contact Mr Matt Crossingham

Annexure B – Paintback constitution

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Constitution of Paintback Limited

Adopted on the date of incorporation of the company by written agreement of the persons specified in the application for the Company's registration as the persons who consent to become members, pursuant to section 136(1)(a) of the *Corporations Act 2001*.



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1 Name of Corporation

The name of the company is **Paintback Limited**.

2 Status of the Constitution

2.1 Constitution of the Company

This is the constitution of the Company.

2.2 Replaceable Rules

This Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

3 Interpretation

3.1 Definitions

In this Constitution these terms have the following meanings:

A&D Paint	Has the meaning given to that term in the Waste Paint Agreement.
Auditor	The person appointed for the time being as the auditor of the Company.
Board	The Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Victoria.
Chairperson	The chairperson of the Board pursuant to clause 17.1(a) .
Chief Executive Officer	Any person appointed for the time being as a chief executive officer of the Company.
Company	Paintback Limited.
Constitution	The constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.
Containers	Has the meaning given to that term in the Waste Paint Agreement.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Director	A person who is a director for the time being of the Company and Directors means more than one Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates.

Effective Date	Has the meaning given to that term in the Waste Paint Agreement.
Independent Director	A director who is a non-executive of the Company or any Member and who is free of any business or other relationship that could materially interfere with -- or could reasonably be perceived to materially interfere with -- the independent exercise of their judgement.
Levy Contribution	Has the meaning given to that term in the Waste Paint Agreement.
Member	A person who is, or who is registered as, a member of the Company and Members means more than one Member.
Member's Guarantee Amount	An amount equal to \$100.
Membership	Being a Member of the Company.
Nominated Members	The Members specified or contemplated in clause 7.2 as being the 'Nominated Members' of the Company for the purposes of this Constitution for the time being.
Product Stewardship Act	The <i>Product Stewardship Act 2011</i> (Cth), and any exemption, modification, declaration or order made in respect of that legislation which applies to the Company.
Register of Members	The register of Members maintained pursuant to the Corporations Act.
Replaceable Rules	The replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.
Scheme	A national product stewardship scheme in Australia under the Product Stewardship Act to manage the collection, treatment and disposal of Waste Paint, including Containers, for the purpose of reducing the health and environmental impacts of unwanted or left over Waste Paint.
Scheme Participant	Has the meaning given to that term in the Waste Paint Agreement.
Seal	The common seal for the time being of the Company.
Secretary	Any person appointed for the time being as, or to perform the functions of, secretary of the Company.
Top Three Levy Remitters	Has the meaning in clause 7.2(a)(i) .
Waste Paint	Has the meaning given to that term in the Waste Paint Agreement

Waste Paint Agreement

The Waste Paint Collection and Treatment Scheme Agreement between the Company and the initial scheme participants listed in schedule 1 of that document, and any other scheme participant who accedes to that document (as amended, supplemented, extended or replaced from time to time).

3.2 Interpretation

In this Constitution:

- (a) the words 'including', 'include' and 'includes' are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a 'person' includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act.

4 Objects and purpose

4.1 Objects

The Company shall have the following objects:

- (a) to implement the Scheme;
- (b) to monitor, audit and report on the development of the Scheme;
- (c) to undertake education, awareness and information activities to promote the Scheme;
- (d) to support early stage research and market development to improve resource recovery from unwanted or left over Waste Paint;
- (e) to result in a net environmental benefit targeting Waste Paint
- (f) to minimise damage to the environment from inappropriate disposal of Waste Paint;
- (g) to promote or support changes to the law designed or likely to help all or any of the objects of the Company and to oppose any changes therein designed or likely to impede the same and to effect or attempt to effect improvements in administration for the purposes aforesaid; and

- (h) to do all such lawful things as the Company may think incidental or conducive to attainment of the objects of the Company or any of them.

4.2 Application of income and property for objects only

The profits (if any), other income and property of the Company, however derived, must be applied solely toward the promotion of the objects of the Company as set out in **clause 4.1**.

4.3 No dividend, bonus, distribution or profit paid to Members

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus, distribution or otherwise.

4.4 Payments by Company in good faith

Clause 4.3 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company is a partner:

- (a) of remuneration for services provided by that officer or Member to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest at a rate not exceeding the rate fixed for the purpose of this clause by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (d) of reasonable rent for premises let by an officer of the Company, or a Member.

5 Modification or repeal of this Constitution

5.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

5.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

6 Member's liability

6.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

6.2 Limited liability

The amount that each Member or past Member is liable to contribute under **clause 6.1** is limited to the amount of the Member's Guarantee Amount.

7 Members

7.1 Number of Members

- (a) The Company must have at least one Member.
- (b) On the adoption of this Constitution, the members of the Company are:
 - (i) PPG Industries Australia Pty Limited;
 - (ii) DuluxGroup (Australia) Pty Ltd;
 - (iii) Henry Haymes Proprietary Limited;
 - (iv) Valspar Paint (Australia) Pty Ltd; and
 - (v) Resene Paints (Australia) Limited.

7.2 Nominated Members

- (a) Subject to **clause 7.2(b)**, the Nominated Members of the Company will be:
 - (i) the three Members who have remitted the highest aggregate Levy Contribution in the 12 month period ending on the 31 December occurring before the expiration of the term of the current Nominated Members (**Top Three Levy Remitters**) as determined in accordance with **clause 17.4(a)(i)**; and
 - (ii) one other Member who is a manufacturer and/or importer and seller of A&D Paint as determined by the Board in accordance with **clause 17.4(a)(ii)**,

or any replacement appointed by the Board in accordance with **clause 17.4(c)**. The Nominated Members for the time being will occupy that position for the term specified in **clause 7.2(c)**.
- (b) On the implementation of this Constitution, the Nominated Members of the Company (in no particular order) are:
 - (i) PPG Industries Australia Pty Limited;
 - (ii) DuluxGroup (Australia) Pty Ltd;
 - (iii) Henry Haymes Proprietary Limited; and
 - (iv) Valspar Paint (Australia) Pty Ltd.

- (c) The Nominated Members specified in **clause 7.2(b)** will be the Nominated Members of the Company for a term commencing on the adoption of this document and ending on the third anniversary of the Effective Date. Thereafter, the Nominated Members will be the Nominated Members of the Company for successive periods of three years.
- (d) For the avoidance of any doubt, if a Member ceases to be a Nominated Member, that Member remains a Member.

7.3 Pre-condition to Membership

A person is entitled to become a Member if that person agrees in writing to assume the liability to pay the Member's Guarantee Amount.

7.4 Becoming a Member

Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register of Members.

7.5 Eligibility for Membership

Any person is eligible to become a Member if the person is a body corporate.

7.6 Consideration for application for Membership

If a body corporate applies to become a Member of the Company and satisfies the criteria in **clause 7.5**, at the first general meeting of the Company after such an application has been received by the Company, the Company must consider the application. For any application to be accepted a special resolution to that effect must be passed.

7.7 Registration as Member

If the Company accepts an application for Membership pursuant to **clause 7.6**, as soon as practicable, the Company Secretary must register the name of the body corporate in the Register of Members.

7.8 Application for Membership

The Board may prescribe the form of the application for Membership.

8 Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

9 Cessation of Membership

9.1 Cessation of Membership of a body corporate

A body corporate ceases to be a Member:

- (a) if the body corporate resigns as a Member in accordance with this Constitution;

- (b) if the body corporate ceases to satisfy the eligibility requirements for Membership under this Constitution;
- (c) if the body corporate is expelled as a Member in accordance with this Constitution;
- (d) if the body corporate is placed under external administration or makes any composition or arrangement with its creditors; or
- (e) if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

9.2 Resignation of Member

A Member may resign from the Company by giving the Board at least 30 days' notice.

9.3 Expulsion of Member

If the Company passes a special resolution that it is not in the best interests of the Company for a body corporate to remain as a Member, that body corporate is automatically expelled as Member.

10 Maintenance of Register of Members

10.1 Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member; and
- (c) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

10.2 Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members at between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

11 General meetings

11.1 Annual general meetings

The Company must hold its first annual general meeting within 18 months after its incorporation.

11.2 Director convening a general meeting

Any Director or the Directors may convene a general meeting.

11.3 Meetings requested by Members

- (a) If the Board receives a request from at least two Members to call and arrange to hold a general meeting, the Board must give notice of a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

11.4 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

11.5 Calculation of period of notice

In computing the period of notice under **clause 11.3**, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

11.6 Directors entitled to notice of general meeting

A Director is entitled to receive notice of and to attend all general meetings of the Company and is entitled to speak at those meetings.

11.7 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed by all Members and accordingly, any such general meeting will be treated as having been duly convened.

11.8 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

11.9 General meetings at two or more places

A general meeting may be held in two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

11.10 Postponement or cancellation of general meeting

Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.

11.11 Notice of change, postponement or cancellation of meeting

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

11.12 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

12 Proceedings at general meetings

12.1 Quorum

- (a) A quorum at a general meeting is two thirds or more of Members, who must be present in person or by proxy. The quorum must be present at all times during the general meeting.
- (b) If a Member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

12.2 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting:
 - (i) the general meeting is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors at the meeting may determine; or
 - (ii) if the Directors do not so determine, no Director is present or no Director present determines:
 - (A) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (B) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (C) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

12.3 Chairing general meetings

- (a) The chair of the general meeting will be the Director elected for the time being as chair of the Board meetings.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

12.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including of the procedures to be adopted and the application of those procedures at that meeting.

12.5 Adjournment

- (a) The chair of a general meeting at which a quorum is present may adjourn the general meeting.

- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business left unfinished at the adjourned or postponed general meeting.

13 Proxy

13.1 Appointment of proxy

- (a) A Member may appoint a person as proxy to attend, speak and vote for that Member at a general meeting of the Company. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a Member.

13.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.

13.3 Proxy to be received by Company

An instrument purporting to appoint a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office; or

- (b) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

13.4 Power to demand poll

A proxy may demand, or join in demanding, a poll in accordance with this Constitution.

13.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

13.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

13.7 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

14 Body corporate representative

14.1 Appointment of corporate representative

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

14.2 Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

14.3 Instrument to be received by Company

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office; or
 - (ii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

14.4 Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

14.5 Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member; or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative; or
 - (ii) the appointment of a new corporate representative.

14.6 No liability

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

15 Voting

15.1 Entitlement to one vote

Each Member may vote in person or by proxy at a general meeting. Each Member has one vote, whether on a show of hands, or on a poll.

15.2 Questions to be decided by majority

Subject to this Constitution and the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

15.3 Questions to be decided by special resolution

Any decision to amend or repeal this Constitution, or any decision which this Constitution requires to be passed by a special resolution of Members, is taken to be carried if:

- (a) at least 75% of the votes cast by Members on the resolution are in favour of it; and
- (b) at least 75% of the Nominated Members vote in favour of the resolution.

15.4 Casting vote

Without limiting **clause 15.2**, if on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has no casting vote.

15.5 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

15.6 Voting on resolution

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.

15.7 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

15.8 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

15.9 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minute book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minute book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

15.10 Disputes to be resolved by chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

16 Poll

16.1 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

16.2 Right to demand poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by any Member.

16.3 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

17 Appointment and removal of Directors

17.1 Number of Directors

The number of Directors (not counting alternates) must not be less than four or more than eight, to be made up as follows:

- (a) up to two Independent Directors, one of whom must be appointed to the position of Chairperson;
- (b) one nominee Director of each of the Nominated Members;
- (c) up to two additional Directors from time to time.

17.2 Directors below minimum required

If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except in emergencies, or for appointing one or more Directors in order to make up a quorum for a meeting of the Board, or to call and arrange to hold a general meeting of Members.

17.3 Directors of Nominated Members

- (a) Each person who holds office as a Director of a Nominated Member must be treated as appointed in accordance with this Constitution, has been appointed in the manner set out in clause 7.2(c) and are ineligible to receive remuneration.

17.4 Directors of each Nominated Member

- (a) For the purposes of determining the Nominated Members in accordance with **clause 7.2(a)**, not less than 30 Business Days prior to the expiration of the term of the current Nominated Members:
 - (i) the Chairperson must obtain and review all relevant data to determine the Top Three Levy Remitters, and notify the Board as soon as practicable of the determination after such determination has been made; and
 - (ii) the Board must decide (by special resolution) one other Member to become a Nominated Member.
- (b) Once the Nominated Members have been determined in accordance with **clause 17.4(a)**, the Board must notify the new Nominated Members of the determination. For the avoidance of any doubt, a retiring Nominated Member is eligible for re-appointment as a Nominated Member.
- (c) If a Nominated Member does not want to exercise its right to appoint a nominee Director for the next term, it must notify the Board within 5 days of receipt of notification from the Board, in which case the Board will choose another Member (by special resolution) to replace that Nominated Member for the next term and give notice to that Member.
- (d) Each Nominated Member nominates (as a standing nomination) its respective managing director or chief executive officer or equivalent manager (as applicable) as its nominee Director.
- (e) Once the process contemplated in **clauses 17.4(a) to 17.4(d)** has concluded, the Board must notify all Members accordingly. Such notification must include the following information:
 - (i) the date that the current Nominated Members cease to be the Nominated Members;
 - (ii) the date that the new Nominated Members commence to be Nominated Members and the identity of the new Nominated Members; and
 - (iii) the name of the person that each new Nominated Member appoints as its nominee Director.
- (f) A nominee Director of each of the Nominated Members will be appointed for a term of three years, being the same period as the term of the appointing Nominated Member.
- (g) A retiring Director is eligible for re-appointment.
- (h) If a nominee Director of each of the Nominated Members changes during the Director's term, that Nominated Member must notify the Company:
 - (i) of the removal of that person as its nominee Director; and
 - (ii) the name of its new nominee Director, together with that person's consent to act as a Director of the Company.

17.5 Appointment of Directors

- (a) Subject to this Constitution:
 - (i) in relation to the appointment of the nominee Director of each of the Nominated Members, each Nominated Member appoints its respective managing director or chief executive officer or equivalent manager (as applicable) as its nominee Director, or if such person is removed as Director pursuant to **clause 17.7**, that Member is entitled to appoint any person as its replacement Director. The Company and the Board must take all necessary steps to ensure that each nominee Director of a Nominated Member is appointed to the Board; and
 - (ii) in relation to the appointment of all other Directors, the Company may by special resolution at a general meeting appoint a person as a Director on the terms (including the length of tenure) of the resolution.
- (b) Subject to this Constitution, the Board may by special resolution at a Board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (c) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

17.6 Confirmation of appointment

If a person is appointed as a Director by the Board, the Company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

17.7 Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, the Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director:
 - (i) may submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) may speak to the motion to remove the Director at the general meeting at which the resolution is to be put to vote.

- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

17.8 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act;
- (f) is absent from Board meetings for a continuous period of 6 months without leave of absence from the Board and the Board does not resolve that the Director should not cease to be a Director; or
- (g) ceases to be a Director pursuant to **clause 17.4**.

17.9 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

18 Powers and duties of Board

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include (but are not limited to) the power to:
 - (i) borrow or otherwise raise money;
 - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iii) issue debentures and other securities, and any instrument (including any bond).
- (d) The Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee of Directors;

- (iii) an employee of the Company; or
- (iv) any other person.

19 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

20 Chief Executive Officer

- (a) The Board may appoint a Chief Executive Officer of the Company, for such period, and on such terms (including as to remuneration), as the Board determines.
- (b) The Board may confer on a Chief Executive Officer any of the powers that the Board may exercise.
- (c) The Board may vary or revoke a conferral of any power on the Chief Executive Officer.
- (d) The Board may at any time vary or revoke an appointment of a Chief Executive Officer.

21 Alternate Directors

21.1 Appointment and terms of appointment

- (a) Any Director may appoint a natural person to act as the alternate of that Director and may specify the terms of the alternate's appointment. The terms of that appointment may provide for the alternate to exercise some or all of the powers of that Director.
- (b) A person may be appointed as the alternate of more than one Director.
- (c) An alternate is not an agent of the Director appointing the alternate.
- (d) The Director appointing an alternate must give notice to the Company of that appointment. If the notice does not detail the terms of the appointment, the alternate will have the power to exercise all of the powers of the Director. The appointment will continue until notice of termination of the appointment is received by the Company.
- (e) Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.

21.2 No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

21.3 Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

21.4 Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate. An alternate may not attend any board meeting at which the Director who appointed the alternate is present, except where the alternate is appointed by more than one Director and the alternate is attending that Board meeting in respect of a Director who is not present.

21.5 Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

21.6 Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

21.7 Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

22 Remuneration and reimbursement for expenses

22.1 Remuneration of Independent Directors

- (a) The Independent Directors will be remunerated for their services as Directors by:
 - (i) an amount or value of remuneration each year (if any) as the Board determines (by special resolution); or

- (ii) an aggregate amount or value of remuneration (if any) not exceeding the maximum amount or value as the Board determines (by special resolution), to be divided among them in such proportion and manner as they agree or if they do not agree, equally.
- (b) The remuneration for Independent Directors must be a fixed amount or value and not a commission of any nature.
- (c) The aggregate maximum amount of remuneration for Independent Directors must not be increased except with the prior approval of the Board. Particulars of the amount of the proposed increase and the new maximum amount of value that may be paid to the Independent as a whole must be detailed in the notice convening the meeting.

22.2 Remuneration of other Directors

The Board may determine (by special resolution) to pay Directors other than Independent Directors any fee (or other remuneration) for services performed as a Director.

22.3 Reimbursement of expenses

Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

23 Board meetings

23.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

23.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

23.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

23.4 Use of technology

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting as determined by the chair of the meeting.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.
- (e) A Director may not leave a meeting using technology consented to by all Directors unless the chair consents to that Director leaving.
- (f) A Director is presumed conclusively to have been present and to have formed part of a quorum at all times during a meeting using technology consented to by all Directors, unless the chair consents to that Director leaving in which case that Director will be treated as having been present until that Director leaves.

23.5 Quorum at meetings

A quorum at a Board meeting is at least two thirds or more of the Directors, who must be present in person. The quorum must be present at all times during the Board meeting.

23.6 Chair of meetings

- (a) The Chairperson will act as chair of the Board meetings.
- (b) If the chair is not present within 15 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

23.7 Passing resolutions at meetings

- (a) Subject to **clause 23.7(b)**, a resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.

- (b) The following decisions of the Board must be passed by a special resolution:
 - (i) any amendments to or extension of the Waste Paint Agreement;
 - (ii) determining a Nominated Member in accordance with **clause 17.4(a)(ii)**;
 - (iii) appointing a new Nominated Member in accordance with **clause 17.4(c)**;
 - (iv) appointing a Director in accordance with **clause 17.5(b)**;
 - (v) determining the remuneration of Independent Directors in accordance with **clause 22.1(a)**, and of other Directors in accordance with **clause 22.2**;
 - (vi) passing a resolution to implement the Scheme in accordance with clause 2(b) of the Waste Paint Agreement; and
 - (vii) making any changes to the Waste Levy in accordance with clause 5 of the Waste Paint Agreement.
- (c) Any decision which this Constitution requires to be passed by a special resolution of the Board, is taken to be carried if:
 - (i) at least 75% of the votes cast on the resolution by the Directors entitled to vote on the resolution are in favour of the resolution; and
 - (ii) at least 75% of the nominee Directors of the Nominated Members vote in favour of the resolution.
- (d) Each Director present in person or by alternate is entitled to vote and has one vote.

23.8 Casting vote

Without limiting **clause 23.7**, if on any resolution an equal number of votes is cast for and against a resolution, the chair has no casting vote in addition to any vote cast by the chair as a Director.

23.9 Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, including of the procedures to be adopted and the application of those procedures at that meeting.

23.10 Written resolutions

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document.

23.11 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within one month after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

23.12 Validity of acts of Directors

All acts done at a meeting of the Directors, or by a person acting as a Director, are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
 - (b) a person acting as a Director was disqualified or not entitled to vote,
- valid as if the relevant person had been duly authorised or had duly continued in office and was qualified and entitled to vote.

23.13 Committee meetings

The rules of this Constitution relating to meetings (including resolutions and minutes) and proceedings of the Board with any necessary modifications apply to the meeting of any committee of the Board except that a quorum for a meeting of any committee is from time to time to be determined by the Board.

24 Director's interests

24.1 Declaration of interest

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

24.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum,

except as provided by section 195 of the Corporations Act.

25 Appointment of Secretary

- (a) The Company must have at least one Secretary. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.
- (c) The Company may pay a Secretary any fee (or other remuneration) it determines by resolution for services performed as Secretary.

26 Removal and remuneration of Auditor

26.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Directors at a Board meeting.

26.2 Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is voted upon;; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is to be put to a vote.

26.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

27 Seal

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by two Directors or a Director and Secretary.

28 Financial records

28.1 Fundamental principles regarding commercially sensitive information

- (a) It is a fundamental principle agreed to by the Members and the Board that, in implementing the objectives of the Company, to the extent practicable and to the extent permitted by law, any financial record or other record of the Company that contains commercially sensitive information of the Members and any Scheme Participant in respect of the Waste Paint Agreement will not be disclosed to any Member or Director (other than an Independent Director or the Chief Executive Officer).
- (b) As soon reasonably practicable after the incorporation of the Company, the Board must devise and implement appropriate protocols to:
 - (i) effectively manage commercially sensitive information to minimise to the extent practicable the receipt by the Company of commercially sensitive information of Members and Scheme Participants, which may include the appointment of a collection agent; and
 - (ii) manage any access to financial records and other Company records by Members and Directors under **clauses 28.2 and 28.3**.
- (c) The protocols referred to in **clause 28.1(b)** must have regard to **clause 28.1(a)**.

28.2 Member's access to financial records

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company be inspected by Members.

28.3 Directors' access to financial records

Subject to **clause 28.1**, any Director may at any time access and inspect any financial record of the Company.

28.4 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record of the Company relating to the time during which the person was a Director.

29 Notices

29.1 General

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

29.2 How to give a communication

- (a) In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:
 - (i) personally delivered;
 - (ii) left at the person's current address as recorded in the Register of Members;
 - (iii) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - (iv) sent by fax to the person's current fax number for notices; or
 - (v) sent by email to the person's current email address for notices.

29.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

29.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

29.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

29.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

30 Indemnity and insurance

30.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each officer, Director and Secretary or any person who has been an officer, a Director or Secretary of the Company out of the assets of the Company against any liability, loss, damage, cost or expense incurred or to be incurred by the officer, Director or Secretary in or arising out of the conduct of any activity of the Company or in or arising out of the proper performance of the officer's, Director's or Secretary's duties including any liability, loss, damage, cost, charge and expense incurred by that officer, Director or Secretary in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by the officer, Director or Secretary, in which judgment is given in the officer's, Director's or Secretary's favour or in which the officer, Director or Secretary is acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the court to the officer, Director or Secretary.
- (b) This indemnity is not intended to indemnify any officer, Director or Secretary in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.

30.2 Documenting indemnity

The Company must enter into an agreement or deed containing an indemnity in favour of any officer, Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement or deed.

30.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must pay any premium in respect of a contract of insurance between an insurer and a officer, Director or Secretary or any person who has been a officer, Director or Secretary of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer, Director or Secretary of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

31 Winding up

If the Company is wound up, any property that remains after:

- (a) satisfaction of all debts and liabilities of the Company; and
- (b) the payment of the costs, charges and expenses of winding up;
- (c) any adjustment of the rights of the contributories among Members,

must not be distributed among the Members but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company.

Annexure C – Waste Paint Agreement

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**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth

Paintback Limited

The parties listed in Schedule 1

Waste Paint Collection and Treatment Scheme Agreement

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29 April 2016

Parties

Paintback Limited ACN 610 171 312 of Suite 402B 198 Harbour Esplanade Docklands, VIC 3008

The Scheme Participants

Background

- A. The initial Scheme Participants, in consultation with APMF, the national industry body that represents the architectural and decorative paint manufacturing industry, have established a new product stewardship organisation, PBL, to implement the Scheme.
 - B. PBL is a not-for-profit company limited by guarantee. The Scheme Participants will support and promote the Scheme through funding by a levy on the sale of A&D Paint which will be the subject of an authorisation by the ACCC.
 - C. This Agreement sets out the structure of the Scheme, the Waste Levy and the funding and other obligations of the Scheme Participants.
-

Agreed terms

1 Definitions and Interpretation

1.1 Definitions

In this document these terms have the following meanings:

A&D Paint	All decorative and architectural paints supplied in Containers described in column A of schedule 4 , but excluding those products described in column B of schedule 4 .
ACCC	The Australian Competition and Consumer Commission.
Act	The <i>Competition and Consumer Act</i> 2010.
Agreement	This document.
APMF	Australian Paint Manufacturers' Federation Inc.
Audit Notice	Has the meaning in clause 6(d) .
Board	The board of directors of PBL.
Collection Agent	Any person appointed by PBL for the time being to perform the role of 'Collection Agent' for the purposes contemplated by this document.
Containers	All paint containers 1 litre and over and up to and including 20 litres but excluding all aerosol containers.
Deed of Accession	The deed of accession in the form set out in Schedule 3 .
Effective Date	Has the meaning defined in clause 2(b) .
Intellectual Property Rights	Any patents, trade marks, service marks, designs, copyright, business names, trade secrets, know how and other intellectual property rights and interests (in each case whether or not registered under any law of any of the states or territories).
Interest	Interest at the interest rate being the daily average cash rate as published in the Market Snapshot section of the Australian Financial Review or, if the average cash rate is discontinued, then as otherwise advised by PBL as a reasonable substitute therefor, plus 300 basis points, compounding for each day from the due date for payment

until payment is made.

Levy Contribution	The aggregate amount, net of any allowable adjustments in accordance with Schedule 2 , which each Scheme Participant is required to contribute to PBL for each month as calculated in accordance with Schedule 2 .
Monthly Invoices	Has the meaning in Schedule 2 .
PBL	Paintback Limited ACN 610 171 312.
Product Stewardship Act	The <i>Product Stewardship Act</i> 2009 (Cth), and any exemption, modification, declaration or order made in respect of that legislation which applies to PBL.
Scheme	A national product stewardship scheme in Australia under the Product Stewardship Act to manage the collection, treatment and disposal of Waste Paint, including Containers, for the purpose of reducing the health and environmental impacts of unwanted or left over Waste Paint.
Scheme Participants	Means: <ul style="list-style-type: none"> (a) the initial scheme participants being listed in Schedule 1, who are parties to this Agreement; and (b) any new Scheme participants who have become a party to this Agreement pursuant to clause 9.
Term	Has the meaning in clause 4(a) .
Waste Levy	The amount of the levy to be imposed on the wholesale price of each litre of A&D Paint, being an amount determined by the Board in accordance with clause 5(a) .
Waste Paint	Residual A&D Paint that is no longer wanted and requires disposal. For collection purposes, the Scheme will accept as Waste Paint all A&D Paint as defined in this Agreement.

1.2 Interpretation

In this Agreement, unless the contrary intention appears from the context:

- (a) words in the singular also import the plural and vice versa and words in one gender include the other genders;
- (b) references to a person refer to a natural person, firm, body corporate, unincorporated association, body politic and authority;

- (c) headings are included for guidance only and do not affect the interpretation of this Agreement;
- (d) where a particular term is defined, other grammatical forms of that term have corresponding meanings;
- (e) a reference to a person includes that person acting through any of its officers, servants or agents; and
- (f) references to a statute, ordinance, code or other law include regulations, directions and other instruments under it and consolidations, amendments re-enactments or replacements of them from time to time.

2 Conditions precedent

The terms of this document will not come into effect until each condition referred to below has been fulfilled:

(a) **(ACCC authorisation)**

The ACCC grants an authorisation to give effect to this document pursuant to section 88 of the Act.

(b) **(Board resolution)**

The Board being satisfied that the Scheme is ready for implementation and passing a special resolution to implement the Scheme on and from the 2nd of May 2016 (being the date specified in the resolution), provided that (without limiting other relevant considerations by the Board):

- (i) the ACCC authorisation referred to in **clause 2(a)** has been obtained; and
- (ii) A&D Paint classified as trade waste across all States/Territories to be reclassified in full alignment with waste classification from retail sources.

3 Implementation and management of Scheme

With effect on and from the Effective Date:

- (a) PBL will implement the Scheme in accordance with the terms of this document and otherwise consistent with the objects of PBL as set out in PBL's constitution, and will be responsible for the ongoing management of the Scheme; and
- (b) each Scheme Participant will comply with the terms of this document, and the reasonable and lawful directions of PBL regarding the implementation of the Scheme.

4 Term

- (a) The term will commence on the Effective Date and will continue for a period of five years or such longer period as determined by PBL in accordance with its constitution, provided that the ACCC grants an extension of the authorisation (or an interim authorisation) pursuant to section 88 of the Act for at least such longer period (**Term**), subject to the operation of the terms of this Agreement.
- (b) PBL will notify each Scheme Participant of the Effective Date and any extension to the Term under **clause 4(a)**.
- (c) On and from the Effective Date, each Scheme Participant will be bound by this document for the Term, unless terminated in accordance with **clause 10**.

5 Levy collection and remittance

- (a) The Board will determine by special resolution the amount of the Waste Levy from time to time, provided that the amount must not exceed the maximum amount approved by the ACCC, and that any changes to the Waste Levy are made in accordance with **clause 5(c)**.
- (b) On the Effective Date, the Waste Levy will be 15 cents.
- (c) The Board may change the amount of the Waste Levy during the Term, provided that each Scheme Participant is given not less than 12 months written notice of the date when such change takes effect.
- (d) On and from the Effective Date, each Scheme Participant will impose, collect and remit the Waste Levy in accordance with **Schedule 2**.

6 Audit

- (a) Each Scheme Participant must procure that its external auditor or, if the company is not required to be audited, an external firm of accountants, undertake an audit of the Monthly Invoices issued by the Scheme Participant referable to each financial year of the Scheme Participant and issues to the Collection Agent (or to PBL if so directed by PBL), within 4 months of the end of each financial year of such Scheme Participant, either of the following (as applicable):
 - (i) a Certificate of Compliance in the form of a letter signed by the auditor or accountants (as applicable) confirming that the contents of each of the Monthly Invoices for the period under review are materially accurate and comply with the requirements of **Schedule 2**; or
 - (ii) a letter of advice signed by the auditor or accountants (as applicable) confirming that the contents of each of the Monthly Invoices for the period under review are materially accurate and

comply with the requirements of **Schedule 2** other than for the matters specified in detail in the letter (any such matters being referred to as **Deviations**).

Provided that the scope of work and format of the Certificate of Compliance or letter of advice (as applicable) is acceptable to PBL (acting reasonably) the marginal cost of each Scheme Participant's compliance with this **clause 6(a)** will be re-chargeable to PBL.

- (b) The Scheme Participants agree that, from time to time, PBL may, on a confidential basis and in circumstances where PBL determines that a special audit is required, arrange for an audit of the supporting documentation for any Monthly Invoice provided by a Scheme Participant pursuant to **Schedule 2**. The Scheme Participants agree that in the event of a request by PBL for an audit, the Scheme Participant must, within 14 days of the request, at its cost, provide full cooperation and all relevant documentation and access required by the auditors to perform and complete the audit.
- (c) If an audit of any Scheme Participant under **clause 6(b)** discloses that the Levy Contributions for that Scheme Participant has not been correctly calculated or paid to PBL, PBL will advise the Scheme Participant and provide details of the audit report.
- (d) PBL may within 21 days of issuing an audit notice under **clause 6(c)** or at any time following receipt of a letter of advice under **clause 6(a)(ii)** invoice the Scheme Participant for any shortfall identified by the audit under **clause 6(c)** or in respect of any Deviations, together with Interest on the outstanding amount, the costs of the audit (as applicable) and any legal expenses reasonably incurred by PBL (**Audit Notice**). The Scheme Participant must pay that invoice as a debt due within 14 days of invoice, which is deemed to be final and binding, unless it gives written notice that it disputes the invoice within that time.
- (e) If the Scheme Participant disputes the results of any audit under this **clause 6** or Audit Notice, the Scheme Participant must provide PBL with a written statement of the basis of its dispute including copies of all information relied upon within 14 days of the Audit Notice.

7 Confidentiality

- (a) Subject to **clause 7(b)**, PBL acknowledges and agrees with each Scheme Participant that any information disclosed to it or to the Collection Agent pursuant to **clauses 5 and 6** and **Schedule 2** of this Agreement is confidential information, and, as such, must not be disclosed or used by PBL or the Collection Agent (as applicable) except for the purposes of calculating the Scheme Participant's Levy Contribution and for the purpose of the implementation of this Agreement (**Confidential Information**).

- (b) Without limiting **clause 7(a)**, PBL and the Collection Agent may disclose or use Confidential Information disclosed to it under or in respect of **clauses 5 and 6** and **Schedule 2** of this Agreement as required by law or by request or order of any court, arbitrator, mediator or regulatory agency or where:
 - (i) the Confidential Information is disclosed or used in aggregate form only, such that no Scheme Participant is referred to by name or in any other way which would enable it to be identified; or
 - (ii) the prior written consent to such disclosure or use has been obtained from the Scheme Participant who disclosed the information to PBL or the Collection Agent (as applicable).
- (c) PBL will use its best endeavours to ensure that the Collection Agent complies with **clauses 7(a)** and **7(b)**.
- (d) Where a person becomes a Scheme Participant after the Effective Date, that person must comply with this Agreement including this **clause 7** as from the date that they become a Scheme Participant pursuant to **clause 9.2**.
- (e) Each Scheme Participant must keep available for not less than a five year period, in a form reasonably required by PBL as advised from time to time, accurate and proper records of its sales of A&D Paint which are subject to the Waste Levy.

8 Intellectual Property Rights

- (a) The Scheme Participants hereby assign, and will ensure that their employees assign, to PBL all their existing and future Intellectual Property Rights in all the intellectual property created in relation to the development and promotion of the Scheme. The Scheme Participants must do all things necessary as required by PBL to perfect the assignments contemplated by this clause.
- (b) The Scheme Participants acknowledge that PBL owns all rights (including the Intellectual Property Rights) in the intellectual property created in relation to the development and promotion of the Scheme.
- (c) PBL grants to the Scheme Participants a non-transferable, non-exclusive, royalty-free licence to exercise all of the Intellectual Property Rights created in relation to the development and promotion of the Scheme which the Scheme Participants need in order to exercise any of their rights or perform any of their obligations under this Agreement and only to the extent necessary to perform those obligations.
- (d) The Scheme Participant must not use, and must ensure that its employees do not use, the Intellectual Property Rights created in relation to the development and promotion of the Scheme except for the purposes of carrying out this Agreement.

- (e) PBL must prepare, as soon as practicable following the date of this Agreement but prior to the Effective Date and thereafter may revise as appropriate, advertising guidelines in relation to the manner in which Scheme Participants, PBL and participating retailers may advertise the Scheme and their respective roles in connection with the Scheme (**Scheme Advertising Guidelines**). The requirements of the Scheme Advertising Guidelines must be established and revised as appropriate to best promote and support the Scheme. Each party to this Agreement agrees to abide by the Scheme Advertising Guidelines in force from time to time.

9 New Scheme Participants

9.1 Eligibility

An entity or organisation which is not a Scheme Participant may become a Scheme Participant if:

- (a) it is in the business of manufacturing and/or importing and selling A&D Paint (whether or not it is a member of the APMF);
- (b) PBL has agreed in writing that that entity or organisation may become a Scheme Participant; and
- (c) it agrees to commit to participate in the Scheme in accordance with this Agreement for the Term.

9.2 Becoming a party to this Agreement

Subject to **clause 9.1**, an entity or organisation may become a party to this Agreement by executing a Deed of Accession, and on and from the later of the date of execution of the Deed of Accession and the date of agreement by PBL that the entity or organisation may become a Scheme Participant, it will be obliged to impose the Waste Levy on and from that date, and collect and remit the Waste Levy in accordance with **Schedule 2**.

10 Termination

10.1 Termination

- (a) This Agreement terminates:
 - (i) on the expiration of the Term; or
 - (ii) if the ACCC authorisation referred to in **clause 2(a)** is no longer in force under the Act.
- (b) In either circumstance referred to in **clause 10.1(a)**, PBL will notify the Scheme Participants and this Agreement will terminate effective on the date so notified.
- (c) A Scheme Participant may resign as a participant under this Agreement by giving the Board not less than 12 months' written notice of its intention

to do so. The Scheme Participant's participation in the Scheme terminates on the expiration of such notice.

10.2 Effect of termination

- (a) If this Agreement terminates under **clause 10.1(a)**, or a Scheme Participant participating in the Scheme terminates under **clause 10.1(c)**, each relevant Scheme Participant is required to:
 - (i) continue to impose the Waste Levy up to and including on the termination date;
 - (ii) after the termination date, collect and remit the Waste Levy in accordance with **Schedule 2** on any Waste Levy that is due and payable as at the termination date, until all outstanding amounts have been collected and remitted to PBL; and
 - (iii) on and from the day after the termination date, a Scheme Participant must cease to impose the Waste Levy.

11 GST

11.1 Definitions

In this **clause 11**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

11.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

11.3 Payment of GST

If GST is payable in respect of any supply made under this Agreement, then any party (the **Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay to the Supplier an amount equal to the GST payable on the supply. Subject to **clause 11.4**, the recipient will pay the amount referred to in this **clause 11.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

11.4 Tax invoices

- (a) The parties agree that the Recipient shall issue recipient created tax invoices (**RCTIs**) in respect of taxable supplies made by the Supplier, by reference to or in connection with this Agreement, and the parties effect a written agreement in accordance with the conditions set out by the Commissioner of Taxation in GST Ruling 2000/10 as follows:

- (i) the Recipient can issue tax invoices in respect of the services provided by the Supplier in accordance with **Schedule 2** of this Agreement (**Services**);
 - (ii) the Supplier will not issue tax invoices in respect of its Services in accordance with this Agreement;
 - (iii) the Supplier acknowledges that it is registered for GST as at the date of this Agreement and will notify the Recipient if it ceases to be registered;
 - (iv) the Recipient acknowledges that it is registered for GST as at the date of this Agreement and will notify the Supplier if it ceases to be registered;
 - (v) the Recipient will issue an adjustment note to the Supplier for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
 - (vi) the Recipient and the Supplier acknowledge that the RCTI to be issued in accordance with this Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and
 - (vii) the agreement in this **clause 11.4(a)** will terminate immediately if the Recipient or the Supplier cease to satisfy any of the requirements under the GST Act for issuing a RCTI.
- (b) In respect of taxable supplies to which **clause 11.4(a)** does not apply, no payment of any amount pursuant to **clause 11.3** is required until the supplier has provided a tax invoice or adjustment note as appropriate to the recipient.

11.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under **clause 11.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

11.6 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

12 No merger

The rights and obligations of the parties under this Agreement shall survive, and remain binding and enforceable, notwithstanding the expiration of the Term, or the termination of this Agreement to the extent necessary to preserve the intended benefits of such provisions.

13 General

13.1 Governing Law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria entitled to hear appeals from these courts.

13.2 Costs and counterparts

- (a) Each party must bear its own costs and expenses of negotiating, preparing, executing and performing this Agreement, including all legal costs and expenses.
- (b) This Agreement may be executed in counterparts.

13.3 Notices

Any notice or other communication required or permitted to be given by or pursuant to this Agreement must be given in writing and either delivered personally, sent by prepaid registered post, facsimile or sent in an electronic form (such as e-mail) with a copy of the electronic notice being sent by facsimile or mail as soon as possible afterwards, to the relevant party or to such other person or address as the relevant party may from time to time notify in writing.

13.4 Deemed receipt of a notice or other communication

Any notice or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid registered post, 7 days after the date of posting unless actually received earlier;
- (c) if sent by facsimile, on production by the machine from which the facsimile was sent of a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if sent in an electronic form, on the date on which the recipient's e-mail system logs the e-mail message as being received.

13.5 Amendment

- (a) This Agreement can only be amended, supplemented or replaced by another agreement in accordance with the constitution of PBL.

- (b) PBL must notify each Scheme Participant in writing of such amendment, supplement or replacement as soon as practicable after same. Such amendment, supplement or replacement will be effective and binding on each Scheme Participant upon receipt of such notification.

13.6 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of PBL.

13.7 Severability

If any one or more of the provisions of this Agreement should be found to be illegal or unenforceable, the validity and enforceability of the remainder of the provisions will not be affected. It is the intention of the parties that any provision found to be illegal or unenforceable should not be terminated but that it be amended to the extent necessary to render it valid and enforceable.

13.8 No partnership or agency

Nothing in this Agreement will be considered to constitute a joint venture, partnership or agency between any of the parties to this Agreement or to merge the assets, liabilities and undertaking of those parties and no party to this Agreement will have the authority to bind any other party to this Agreement in any way.

13.9 Indemnity

PBL provides an indemnity to Scheme Participants against any funds not used in accordance with the terms of this document, including misappropriated funds.

Schedule 1

Scheme Participants

Name	Contact details	Authorised contact person
DuluxGroup (Australia) Pty Ltd	1956 Dandenong Road, Clayton, Victoria, 3168 Phone No: [REDACTED] [REDACTED]	Patrick Jones
Henry Haymes Propriety Limited	Waringa Drive, Wendouree Industrial Park, Ballarat, Victoria, 3350 Phone No: [REDACTED] [REDACTED]	Rodney Walton
Valspar Paint (Australia) Pty Ltd	Level 4, 2 Burbank Place, Norwest Business Park, Baulkham Hills, New South Wales, 2153 Phone No: [REDACTED] [REDACTED]	Richard Meagher
PPG Industries Australia Pty Limited	McNaughton Road, Clayton, Victoria, 3168 Phone No: [REDACTED] [REDACTED]	Tim Welsh
Resene Paints (Australia) Limited	64 Link Drive, Yatala, Queensland, 4207 Phone No. [REDACTED] [REDACTED]	Lee Pomfret

Schedule 2

Levy collection and remittance

- (a) Subject to **paragraph (c)** below, each Scheme Participant must impose the Waste Levy on all sales of A&D Paint to customers in Australia, including any bonus sales of A&D Paint (for example, “two-for-one” offers, or where six litres of A&D Paint is being sold for the price of four litres of A&D Paint).
- (b) Without limitation, A&D Paint is deemed to be intended for supply to a customer within Australia if any of the following apply:
 - (i) the A&D Paint is delivered to a location in Australia;
 - (ii) the customer invoice address is located in Australia; or
 - (iii) the delivery docket address is in Australia.
- (c) The treatment of donations, gifts and sponsorship agreements is to be determined by the Board.
- (d) Each Scheme Participant must ensure that all customer invoices:
 - (i) clearly identify those products that incur the Waste Levy; and
 - (ii) clearly and separately state the total Waste Levy payable by the customer,

unless otherwise approved by PBL.

- (e) Within 21 days after the end of each calendar month each Scheme Participant will provide the Collection Agent (or to PBL if so directed by PBL), on a confidential basis, a recipient generated tax invoice (**Monthly Invoice**) setting out the following information and such additional information as may be reasonably requested by PBL from time to time:
 - (i) the net volume by litres of A&D Paint supplied to all customers in Australia in the previous month (**Monthly Volume Figure**);
 - (ii) the Levy Contribution for the relevant month, which will be calculated as: Monthly Volume Figure x Waste Levy;
 - (iii) any applicable GST or other tax or duty applicable to the Levy Contribution for the relevant month. For the avoidance of doubt, in addition to the Levy Contribution and any other moneys payable under this Agreement by Scheme Participants, the Scheme Participants must pay the amount of any GST or other tax or duty applicable to that Levy Contribution; and
 - (iv) any relevant adjustments on account of:

- (A) returned A&D Paint in accordance with **paragraph (h)**;
- (B) bad debts in accordance with **paragraph (i)**; or
- (C) any other adjustment agreed by PBL from time to time.

An example Monthly Invoice is attached as **Annexure A**.

- (f) Each Scheme Participant must pay the monthly Levy Contribution in full and without delay or set off (other than as permitted under this **Schedule 2**) to the Collection Agent (or to PBL if so directed by PBL) by the last day of the month after the month in which the Monthly Invoice is provided.
- (g) If a Scheme Participant fails to pay the Levy Contribution by the due date, that Scheme Participant must pay Interest on the relevant Levy Contribution.
- (h) Where a customer returns A&D Paint to a Scheme Participant, the Scheme Participant may claim an adjustment to their Levy Contribution in the month that immediately follows the relevant return.
- (i) Where a Scheme Participant has paid its relevant Levy Contribution, and it subsequently incurs a bad debt (as determined in accordance with the relevant Scheme Participant's ordinary accounting practices) in respect of any such money paid, the Scheme Participant may claim an adjustment to their Levy Contribution in the month that immediately follows the date on which the bad debt is incurred.
- (j) In circumstances where a Collection Agent is to be appointed, PBL must ensure that the Collection Agent is engaged on terms that are consistent with the provisions of this Agreement, including this **Schedule 2** and the confidentiality obligations under **clause 7**.

Schedule 3

Deed of Accession

Deed of Accession made at _____ **on** _____

Granted By: [Insert company name and ABN] of [insert address] ("New Scheme Participant")

In Favour of: Paintback Limited ACN 610 171 312 ("PBL")

[Insert company name and ABN] of [insert address] [Insert details of Initial Scheme Participants and any other Scheme Participants who have previously executed a Deed of Accession to the Waste Paint Collection and Treatment Scheme Agreement]

(together the "Existing Scheme Participants")

Recitals

- A. The Existing Scheme Participants have entered into a Waste Paint Collection and Treatment Scheme Agreement with PBL dated [insert date].
- B. The New Scheme Participant wishes to become a party to the Waste Paint Collection and Treatment Scheme Agreement.

With effect from the date of this deed of accession, the New Scheme Participant agrees with the Existing Scheme Participants and PBL (as fully and effectively as if they were a party to this Deed of Accession) to:

- (a) become a party to the Waste Paint Collection and Treatment Scheme Agreement; and
- (b) be bound by the terms and conditions of the Agreement as if references in the Waste Paint Collection and Treatment Scheme Agreement to Scheme Participants included references to the New Scheme Participant.

Executed as a deed poll

Executed by [New Scheme Participant])
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Schedule 4

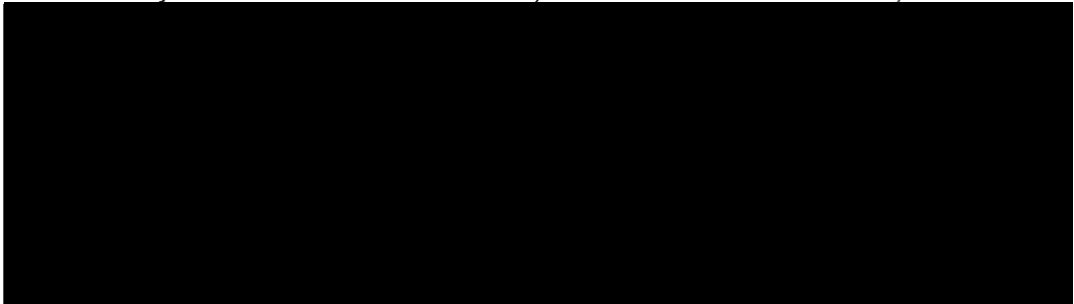
A&D Paint

Column A	Column B
In-Scheme A&D paint <ul style="list-style-type: none"> • Interior and exterior architectural paint – water and solvent based • Deck coatings and floor paints • Primers, undercoats and sealers • Stains and shellacs • Varnishes and urethanes (single component) • Wood coatings (containing no pesticides) 	Out-of-Scheme A&D paint <ul style="list-style-type: none"> • Industrial maintenance coatings • Original equipment manufacturer (e.g. car manufacturing) and industrial surface coating (shop application) paints and finishes • Aerosol paints • Automotive paints • Anti-fouling coatings • Melamine, metal and rust preventative • Caulking compounds, epoxies, glues or adhesives • Colorants and tints • Resins • Paint thinners, mineral spirits or solvents • Paint additives • Roof patch or repair • Tar-based or bitumen-based products • 2-component coatings • Deck cleaners • Traffic paints • Texture coatings • Bagged renders • Isocyanates • Metal Coatings • Paint Washings

Execution

Signed as an agreement.

Executed by Paintback Limited)



Executed by PPG Industries)
Australia Pty Limited)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by DuluxGroup (Australia))
Pty Ltd)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Execution

Signed as an agreement.

**Executed by Paint Stewardship
Limited**)
)

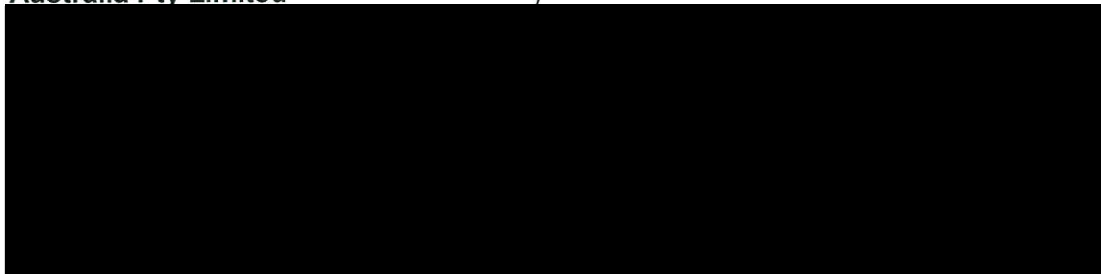
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Director

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Name of Director (print)

**Executed by PPG Industries
Australia Pty Limited**)
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**Executed by DuluxGroup (Australia)
Pty Ltd**)
)

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Company Secretary/Director

.....
Director

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Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Execution

Signed as an agreement.

**Executed by Paint Stewardship
Limited**)
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Company Secretary/Director

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Director

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Name of Director (print)

**Executed by PPG Industries
Australia Pty Limited**)
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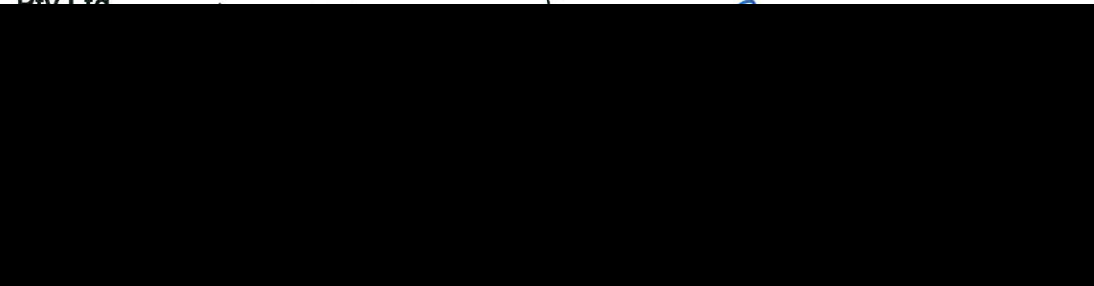
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Company Secretary/Director

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Director

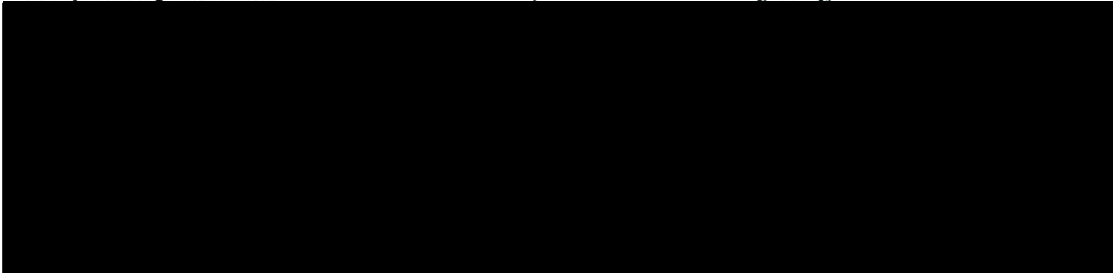
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Name of Director (print)

**Executed by DuluxGroup (Australia)
Pty Ltd**)
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Executed by Henry Haymes)
Proprietary Limited)



Executed by Valspar Paint (Australia))
Pty Ltd)

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Company Secretary/Director

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Director

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Name of Company Secretary/Director
(print)

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Name of Director (print)

Executed by Resene Paints)
(Australia) Limited)

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Company Secretary/Director

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Director

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Name of Director (print)

Executed by Henry Haymes)
Proprietary Limited)

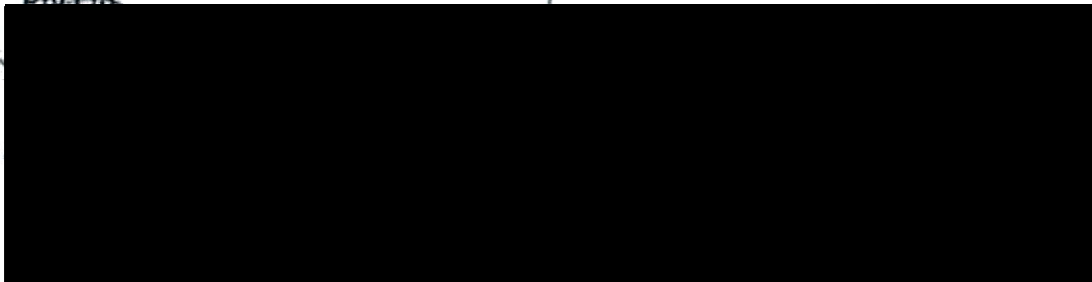
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Executed by Valspar Paint (Australia))
Pty Ltd)



Executed by Resene Paints)
(Australia) Limited)

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Company Secretary/Director

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Name of Director (print)

Executed by Henry Haymes)
Proprietary Limited)

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Pty Ltd)

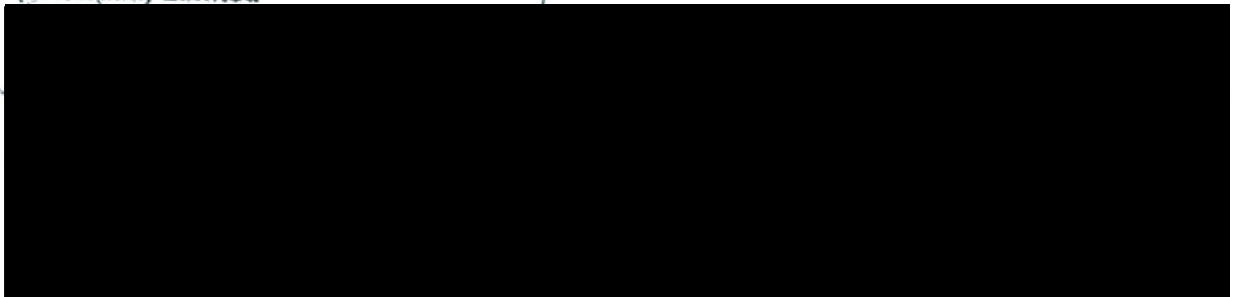
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Company Secretary/Director

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Director

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Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by Resene Paints)
(Australia) Limited)



Annexure A

Monthly Invoice (being a recipient generated tax invoice)

RECIPIENT GENERATED TAX INVOICE

SUPPLIER:

Paintback Limited
Suite 402b, 198 Harbour Esplanade
DOCKLANDS VICTORIA 3008
ABN 55 610 171 312

CUSTOMER:

YOUR COMPANY NAME
YOUR COMPANY.
ADDRESS
YOUR COMPANY ABN

PAINTBACK LEVY

For month ending: _____

Invoice amount: _____

Invoice Number: _____

Description	Units (litres)	Value	GST	Total
Paintback Waste Paint and Packaging Levy	XXX,XXX	\$X,XXX.XX	\$XXX.XX	\$X,XXX.XX
15 cents per litre (plus GST) on eligible products. For more information see paintback.com.au				

The recipient and the supplier declare that this agreement applies to supplies to which this tax invoice relates. The recipient can issue tax invoices in respect of these supplies. The supplier will not issue tax invoices in respect of these supplies. The supplier acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered. The recipient acknowledges that it is registered for GST and that it will notify the supplier if it ceases to be registered for GST. Acceptance of this RCTI constitutes acceptance of the terms of this written agreement. Both parties to this supply agree that they are parties to an RCTI agreement. The supplier agrees to notify the recipient if the supplier does not wish to accept the proposed agreement within 21 days of receiving this document.

Confidential Annexure D – A&D paint retailers and other interested parties