

WESTERN AUSTRALIA

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# PIGMENT FACTORY (AUSTRALIND) AGREEMENT AMENDMENT ACT

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No. 28 of 1987

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AN ACT to amend the *Pigment Factory (Australind) Agreement Act 1986* and for connected purposes.

[Assented to 29 June 1987]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## Short title

1. This Act may be cited as the *Pigment Factory (Australind) Agreement Amendment Act 1987*.

**Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

**Principal Act**

3. In this Act the *Pigment Factory (Australind) Agreement Act 1986\** is referred to as the principal Act.

[\*Act No. 92 of 1986.]

**Section 3 amended**

4. Section 3 of the principal Act is amended—

(a) in the definition of “the Agreement”—

(i) by deleting “the Schedule” and substituting the following—

“ Schedule 1 ”; and

(ii) by deleting the full stop and substituting a semicolon; and

(b) by inserting in the appropriate alphabetical positions, the following definitions—

“ “the Kemerton works site” means the Kemerton works site as defined by the Variation Agreement;

“the Variation Agreement” means the Agreement a copy of which is set out in Schedule 2. ”.

**Sections 4A and 4B inserted**

5. After section 4 of the principal Act the following sections are inserted—

**Variation Agreement**

“ 4A. (1) The Variation Agreement is ratified and its implementation is authorized.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Variation Agreement shall operate and take effect notwithstanding any other Act or law.

Planning laws modified

4B. (1) Notwithstanding anything in the *Local Government Act 1960* or the *Town Planning and Development Act 1928*, by-laws made under section 248 of the *Local Government Act 1960* as read with the Second Schedule to the *Town Planning and Development Act 1928* do not apply to or in relation to the Kemerton works site.

(2) Notwithstanding anything in the *Town Planning and Development Act 1928*, town planning schemes prepared under that Act do not apply to or in relation to the Kemerton works site. ”.

**Heading to Schedule amended**

6. The heading to the Schedule to the principal Act is amended by deleting “SCHEDULE” and substituting the following—

“ SCHEDULE 1 ”.

**Schedule added**

7. After the Schedule to the principal Act the following Schedule is added—

“ SCHEDULE 2 (Section 3)

THIS AGREEMENT is made the 17 day of June 1987 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and

SCM CHEMICALS LTD. a company duly incorporated in the State of Western Australia and having its registered office at Old Coast Road, Australind (hereinafter called “the Company”) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement defined in section 3 of the *Pigment Factory (Australind) Agreement Act 1986* (which agreement is hereinafter referred to as the “Principal Agreement”);
- (b) the parties desire to vary the Principal Agreement as hereinafter provided.

## NOW THIS AGREEMENT WITNESSES:

1. Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st July 1987.
3. The provisions of this Agreement other than this Clause 3 and Clause 2 shall not come into operation until:
  - (1) the Bill referred to in Clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act;
  - (2) the Company has given notice to the State of its acceptance of the conditions and procedures which may be recommended in the EPA Report as defined in Clause 4 (1) (c) of this Agreement and adopted by the Minister for the time being responsible for the administration of the Environmental Protection Act, 1986 (which acceptance may only be withheld where the Company considers that compliance with any individual or combination of conditions or requirements will so adversely affect the economic viability of the proposed Kemerton factory that it would be unreasonable for the Company to proceed) provided that if by the 14th day of August 1987 (or such later date as the Minister may reasonably require) the Company has not given notice of acceptance then by the 31st day of August 1987 (or such later date as the State and the Company may agree) the State and the Company will endeavour to mutually agree a satisfactory arrangement which will permit the Company to give the notice of acceptance; and
  - (3) the State and the Company have executed the agreements for the sale and lease of the works site as contemplated by Clause 13A of the Principal Agreement as amended by this Agreement.
4. The Principal Agreement is hereby varied as follows:—
  - (1) Clause 1—
    - (a) in the definition of “changeover date” by deleting “31st day of December 1989” and substituting the following—

“30th day of June 1990”;
    - (b) in the definition of “chloride plant” by deleting “works site” and substituting the following—

“Kemerton works site”;
    - (c) by deleting the definition “EPA Report” and substituting the following definition—

““EPA Report” means the report (Bulletin 275 May 1987) submitted by the EPA to the Minister in respect of the ERMP to the extent that the same remains relevant and any subsequent report the EPA may submit to the Minister in respect of the NOI;”;
    - (d) by deleting the definition “ERMP” and substituting the following definition—

““ERMP” means the environmental review and management program (dated November 1986) which was submitted by the Company to the EPA;”;

- (e) by inserting, in their appropriate alphabetical positions, the following definitions—

“Kemerton factory” means the factory to be erected and established by the Company pursuant to an approved proposal;

“Kemerton works site” means all that land at Kemerton referred to in paragraph (1) of Clause 6A;

“Finishing Plant” means the plant at the works site which will be upgraded to convert the raw titanium dioxide slurry to produce the finished product;

“NOI” means the notice of intent to be submitted by the Company to the Minister in respect of the chloride plant and the continuing operations on the works site or the more detailed requirements of the EPA pursuant to the Environmental Protection Act 1986;”

- (2) By inserting after Clause 6 the following clause—

“6A. (1) The Company desires as its site for the Kemerton works site certain land comprising 55 hectares or thereabouts and being that portion of the land shown hatched subject to survey on the plan marked “X” and initialled by or on behalf of the parties hereto for the purposes of identification.

(2) Subject to Clause 7 the State shall as soon as practicable after the execution hereof transfer and give vacant possession of the Kemerton works site free from encumbrances to the Company upon payment by the Company of one dollar and all costs associated with the survey and transfer of the land.

(3) The State shall to the extent reasonably necessary for the purposes of this Agreement allow the Company to have access to the Kemerton works site prior to the transfer thereof to the Company for the purpose of carrying out surveys and preparatory building works necessary to enable it to finalise the detailed proposals referred to in Clause 7.”

- (3) Clause 7—

- (a) by deleting subclause (1) and substituting the following subclause—

“(1) The Company shall within sixty (60) days of the Company’s acceptance of (which acceptance shall not be unreasonably withheld) any condition and procedure which may be recommended in the EPA Report and adopted by the Minister for the time being responsible for the administration of the Environmental Protection Act, 1986 (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the extent reasonably practicable its detailed proposals (having due regard where applicable to the ERMP, NOI, the EPA Report and those conditions and procedures) for—

(a) the construction and the establishment on the Kemerton works site of a new plant designed to produce and capable of producing not less than 70,000 tonnes of titanium dioxide pigment per annum by use of the chloride process and the Finishing Plant on the works site, and

(b) the continuing operations on the works site.

Except for proprietary confidential information the detailed proposals shall include plans where practicable and specifications, where reasonably required by the Minister, of the location, area, lay-out, design, quantities, materials and a time programme for the commencement and completion of construction plant commissioning and the provision (as the case may be) of each of the following matters, namely—

- (c) the chloride plant;
- (d) the production of chlorine at the Kemerton works site;
- (e) air separation plant;
- (f) the continuing operations on the works site;
- (g) the concurrent operation of the sulphate plant and the chloride plant;
- (h) the expected solid and liquid discharges and gaseous emissions and the method and location of disposal;
- (i) water supply;
- (j) access roads;
- (k) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors;
- (l) chemicals and other supplies for the ongoing process;
- (m) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for the protection and management of the environment; and
- (n) the security of confidential proprietary information provided to or obtained by the State or any authority of the State to satisfy the provisions of any written law.”.

(4) Clause 9 subclause (1)—

By inserting after “works site” the following—

“or Kemerton works site (as the case may be)”.

(5) Clause 10—

In paragraphs (b), (c) and (d) by inserting after “works site” wherever it occurs the following—

“or Kemerton works site (as the case may be)”.

## (6) Clause 12 subclause (2)—

By inserting after “subclause (1)” wherever it occurs the following—

“and Clause 12A (as the case may be)”.

## (7) By inserting after Clause 12 the following clause—

“12A. Subject to subclause (2) of Clause 12 and in consideration of the Company agreeing to relocate the chloride plant from the works site to the Kemerton works site the State agrees to pay to the Company (or a related company which is acceptable to the State) the sum of SIX MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$6,350,000.00) upon and subject to the terms and conditions of this Agreement and such other terms and conditions as the parties may mutually agree and the Minister considers may be beneficial to the State. The payment will be made progressively as follows—

- (a) as to ONE MILLION FIVE HUNDRED AND EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$1,587,500.00) on 31st July 1988;
- (b) as to ONE MILLION FIVE HUNDRED AND EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$1,587,500.00) on 31st October 1988;
- (c) as to ONE MILLION FIVE HUNDRED AND EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$1,587,500.00) on 31st January 1989; and
- (d) as to ONE MILLION FIVE HUNDRED AND EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$1,587,500.00) on 31st July 1990.

## (8) Clause 13—

- (a) by deleting the heading “Disposal of Works Site” and substituting the following heading—

“Disposal of Kemerton Works Site”;

- (b) by deleting “works site” and substituting the following—

“Kemerton works site”.

## (9) By inserting after Clause 13 the following clause—

“13A. The Company agrees to sell to the State the works site at an agreed price and on condition that upon completion of such sale the State will lease to the Company the portion of the works site as the Company may require and otherwise the sale and lease shall be on such terms and conditions as the parties may mutually agree.”.

## (10) Clause 14 subclause (1)—

by inserting after “works site” the following—

“or Kemerton works site (as the case may be)”.

## (11) Clause 15—

(a) by deleting the heading “Electricity” appearing immediately above Clause 15 and substituting the following heading—

“Energy”;

(b) in subclauses (1) and (2) by deleting “power” wherever it occurs and substituting in each place the following—

“energy”;

(c) by inserting after “works site” wherever it occurs the following—

“or Kemerton works site (as the case may be)”.

## (12) Clause 17—

(a) in paragraphs (a) and (b) of subclause (1) by inserting after “factory” wherever it occurs the following—

“or the Kemerton factory (as the case may be)”;

(b) in paragraph (a) of subclause (2) by inserting after “works site” the following—

“or Kemerton works site (as the case may be)”.

## (13) Clause 18—

(a) by inserting after “works site” wherever it occurs the following—

“or the Kemerton works site (as the case may be)”;

(b) by deleting paragraph (b) and substituting the following paragraph—

“(b) the area of land within a radius of two kilometres of the chloride plant”;

(c) by adding after “operations of the Company hereunder” the following—

“including (without limitation) the erection and use of the Kemerton factory in accordance with approved proposals”;

(d) by deleting “zoning” in the last line and substituting the following—

“town planning scheme”.

(14) By inserting after Clause 18 the following clause—

- “18A. (1) Subject to subclause (2) the design, construction, commissioning and operation of the Kemerton factory shall comply with the lawful requirements of and all regulations and bylaws of all relevant local and other authorities of the State and the Commonwealth and all Acts of the State and Commonwealth applicable thereto.
- (2) Notwithstanding the provisions of any Act, regulation, bylaw, interim development order or town planning scheme the Company shall not be required to obtain any approval or consent required by or under a law of the State to the development of the Kemerton works site or the construction of the Kemerton factory in accordance with the provisions of this Agreement.”.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE  
BRIAN THOMAS BURKE M.L.A. in the  
presence of:

BRIAN BURKE

D. PARKER  
MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of SCM CHEMICALS  
LTD. was hereunto affixed by  
authority of the Board of  
directors in the presence of:

[C.S.]

Director: J. LEACH

Secretary: H. MACIEJEWSKI

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