

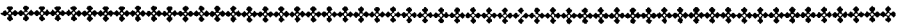


CARBIDE INDUSTRY AGREEMENTS ACT 1984

No. 26 of 1984

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AN ACT to approve and ratify agreements related to the carbide industry in this State.

[Royal Assent 9 May 1984]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the Carbide Industry Agreements Act 1984.

Commence-  
ment.

**2**—This Act shall commence on the day on which it receives the royal assent.

Interpretation.

**3**—In this Act—

“ the Acknowledgement ” means the acknowledgement, a copy of which is set out in Schedule 4;

“ the Principal Agreement ” means the agreement, a copy of which is set out in Schedule 1, entered into by the Minister and White Industries Limited;

“ the Share Sale Agreement ” means the agreement, a copy of which is set out in Schedule 2, entered into by the Minister and Pioneer Concrete Services Limited;

“ the Supplemental Agreement ” means the agreement, a copy of which is set out in Schedule 3, entered into by the Minister, White Industries Limited, and Pioneer Concrete Services Limited.

Ratification,  
&c., of  
agreements, &c.

**4**—(1) The Principal Agreement is hereby ratified and confirmed.

(2) The Share Sale Agreement is hereby ratified and confirmed.

(3) The execution of the Supplemental Agreement by the Honourable Robin Trevor Gray for and on behalf of the State of Tasmania is ratified and confirmed.

(4) The making and signing of the Acknowledgement by the Honourable Robin Trevor Gray for and on behalf of the State of Tasmania is approved.

(5) Notwithstanding the provisions of clause 4 of the Principal Agreement, the provisions of clause 9 of the Heads of Agreement set out in Schedule 1 to the *Carbide Industry Development Amendment Act (No. 2) 1980* continue in force.

Powers of  
Minister.

**5**—The Minister may, for and on behalf of the State of Tasmania—

(a) do all things and take any proceedings as may be necessary or desirable to enforce any or all of the agreements referred to in section 4 (1), (2), and (3);

(b) compromise or settle any such proceedings; and

(c) agree to amend or vary any such agreements upon terms approved by the Governor-in-Council.

## SCHEDULE 1

## Section 4 (1)

## PRINCIPAL AGREEMENT

## AGREEMENT

PARTIES (1) WHITE INDUSTRIES LIMITED OF 201 Pacific Highway North Sydney in the State of New South Wales (hereinafter called "WIL") of the one part

AND (2) ROBIN TREVOR GRAY being and as the Minister for the time being of the State of Tasmania administering the Carbide Industry Development Act 1976, as amended, (hereinafter called "the Minister") of the other part.

## WHEREAS:

- A. WIL is the holder of THREE MILLION FOUR HUNDRED AND SIXTY-EIGHT THOUSAND (3,468,000) fully paid ordinary shares of ONE DOLLAR (\$1.00) each in the capital of Electrona Carbide Industries Pty. Ltd. ("ECI");
- B. THE Minister is the holder of ONE MILLION (1,000,000) fully paid preference shares of ONE DOLLAR (\$1.00) each in the capital of ECI AND TEN MILLION SEVEN HUNDRED AND TWENTY-NINE THOUSAND AND THIRTY-NINE (10,729,039) fully paid redeemable (non-cumulative) preference shares of ONE DOLLAR (\$1.00) each in the capital of ECI.
- C. ECI's principal business has been the manufacture of carbide and associated products at its carbide undertaking at Electrona in Tasmania.
- D. ECI is indebted to the Minister in the sum of FIVE HUNDRED AND THIRTY NINE THOUSAND FIVE HUNDRED AND NINETY TWO DOLLARS EIGHTY FIVE CENTS (\$539,592.85) being principal and interest to the 10th April, 1984 repayment of which is secured by debenture charges over the whole of the assets and undertaking and uncalled capital of ECI dated the 10th June, 1976 and the 14th February, 1977 registered in the Corporate Affairs Office Nos. 6481/12/136 and 6638/12/136 respectively and a mortgage, Registration No. A559368, registered on the 21st April, 1977 over the Land together with interest on the principal sum as provided for in the debenture charges and mortgage ("the Minister's Secured Debt").
- E. ECI is indebted to WIL in the principal sum of FIVE MILLION NINE HUNDRED AND SEVENTY FIVE THOUSAND SEVEN HUNDRED AND SIX DOLLARS AND SEVEN CENTS (\$5,975,706.07) as at the 10th April, 1984 repayment of which is secured by a debenture charge over the whole of the assets and undertaking and uncalled capital of ECI dated the 5th August, 1983 registered in the Corporate Affairs office No. 8397/12/136, together with all such interest and other charges payable by ECI on the principal sum ("WIL's Secured Debt")

- F. ECI has suffered serious financial difficulties, has ceased production at its carbide works and is unable to otherwise utilise those facilities.
- G. WIL is proposing to offer to purchase from ECI the Assets (as herein-after defined) and such offer will only be issued by WIL to ECI, inter alia, upon the Minister entering into this Agreement and Pioneer Concrete Services Limited ("Pioneer") committing to enter into certain arrangements with WIL to purchase and lease certain of the Assets for the purpose of creating a new industry at Electrona in Tasmania ("the Pioneer Arrangements") subject to Pioneer determining to proceed with the Pioneer Arrangements after completion of a Pioneer feasibility study ("the Pioneer Implementation").
- H. THE parties hereto have agreed to enter into this Agreement to record the matters hereinafter appearing.

NOW IT IS HEREBY AGREED AS FOLLOWS:

#### 1 DEFINITIONS

1.1 IN this Agreement, where the context so admits or requires:—

"related corporation" has the meaning assigned to that term for the purposes of the Companies (Tasmania) Code;

"the Assets" means the whole of the assets and undertaking of ECI (except for the Insurance Claim and a portion of real estate to be transferred by ECI to the Municipality of Kingborough for the purposes of a proposed sewerage treatment plant pursuant to the letter dated 3 April, 1984 to ECI from the Council Clerk of the Municipality of Kingborough) which WIL will offer to purchase from ECI;

"the AIFC Secured Debt" means the sum of ONE MILLION SIX HUNDRED AND FIFTY FOUR THOUSAND EIGHT HUNDRED AND SEVENTY EIGHT DOLLARS AND FORTY EIGHT CENTS (\$1,654,878.48) being principal and interest to the 10th April, 1984 owed by ECI to Australian International Finance Corporation Limited secured by Mortgage No. A659119 registered on the 7th August, 1979 over the Land and all such interest and other charges payable by ECI in accordance with the terms of such security;

"the ANZ Secured Debt" means the sum of SEVEN HUNDRED AND FIVE THOUSAND AND SIXTY EIGHT DOLLARS AND NINETY NINE CENTS (\$705,068.99) being principal interest and charges to the 10th April, 1984 owed by ECI to the Australia & New Zealand Banking Group Limited secured by Mortgage Debenture No. 6968/12/136 registered on 30th August, 1978 over the Total Assets and Caveat No. A692653 lodged on 11th April, 1980 over the Land and all such interest and other charges payable by ECI in accordance with the terms of such security;

- “ the Government ” means the Government of Tasmania;
- “ the Insurance Claim ” means the action commenced by ECI in the Supreme Court of Tasmania against ECI’s insurance underwriters and ECI’s insurance brokers and bearing No. 2815 of 1980;
- “ the Land ” means the land situated in the Parish of Kingborough, Land District of Buckingham in the State of Tasmania which is comprised in Certificates of Title Volumes 2443, Folios 45 and 46 and Volume 2863 Folio 38;
- “ the Sale Shares ” means the Ten million seven hundred and twenty nine thousand and thirty nine (10,729,039) fully paid redeemable (non-cumulative) preference shares of One dollar (\$1.00) each in the capital of ECI;
- “ the Total Assets ” means the whole of the undertaking and assets of ECI;
- “ Unsecured Creditors ” means those unsecured creditors of ECI whose proofs of debt have been admitted under the Scheme of Arrangement approved by the Supreme Court of Tasmania and who are still unpaid at the date hereof;

AND references to any party shall include its successors and assigns, the singular includes the plural and vice versa, and any gender shall include every gender;

- 1.2 WHERE more than one corporation is a party to any agreements and undertakings the obligations arising thereunder shall be joint and several;
- 1.3 HEADINGS and marginal notations have been inserted for convenience only and do not constitute or form any part of this Agreement and shall not be considered in its interpretation;

## 2 ACQUISITION OF SALE SHARES

- 2.1 THE Minister hereby agrees to sell to WIL and WIL hereby agrees to purchase from the Minister the Sale Shares together with all rights now attached or attaching thereto.
- 2.2 THE consideration for the purchase of the Sale Shares shall be:—
- 2.2.1 In the event of the Pioneer Implementation, the assignment by WIL to the Minister, from its date of commencement, of the Lease by WIL to Pioneer of the “ B ” parcel of land pursuant to the Pioneer Arrangements (“ the Pioneer Lease ”) subject to the Minister delivering to WIL prior to such assignment an undertaking in enforceable form:—

- (a) to pay to WIL, or other person(s) from time to time nominated by WIL an amount equal to all rentals from time to time received by the Minister from Pioneer pursuant to the Pioneer Lease (and any renewal thereof) other than:—
    - (i) the sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000) per annum for the period from 1st January, 1995 to 31st December, 2005 inclusive (subject to acceleration of such period pursuant to clause 5.2.7 below); and
    - (ii) the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) per annum for the period from 1st January 2006 to 31st December, 2022 inclusive (subject to acceleration of such period pursuant to clause 5.2.7 below);
  - (b) to re-assign the Pioneer Lease (as renewed) to WIL not later than 31st December, 2022 or at such earlier date not before 31st December, 2000, as the parties may agree upon;
- 2.2.2 ANY amounts payable by WIL to the Minister in accordance with the provisions of clause 2.7 below;
- 2.2.3 in the event that there is no Pioneer Implementation and WIL or any related corporation of WIL is subsequently able to sell, transfer, lease, hire or otherwise dispose of the Assets or any part thereof or of any interest in the Assets or any part thereof as provided in clause 2.3 below, to pay to the Minister the moneys payable pursuant to Clause 2.3.6 below (but only to the extent to which such moneys shall be sufficient so to do in accordance with the order of priority specified in clause 2.3 below);
- 2.2.4 in the event that there is no Pioneer Implementation and WIL or any related corporation of WIL is not subsequently able to sell, transfer, lease, hire or otherwise dispose of the Assets or any part thereof or of any interest in the Assets or part thereof as provided in clause 2.3 below, to pay to the Minister the sum of ONE DOLLAR (\$1.00).
- 2.3 IN the event that there is no Pioneer Implementation and WIL or any related corporation of WIL which may at any time have title to the Assets or any part thereof is subsequently able to sell, transfer lease, hire or otherwise dispose of the Assets or any part thereof or of any interest in the Assets or part thereof other than to a related corporation within a period of Five (5) years from the date hereof, then WIL shall, or shall cause the related corporation to, distribute the proceeds of any such sale, transfer lease, hire or other disposition, after deducting all direct costs incurred by

WIL or such related corporation in arranging and completing such sale, transfer lease, hire or other disposition, to the extent to which such proceeds are sufficient so to do in the following order of priority:—

- 2·3·1 first, by way of reimbursement to WIL of all moneys paid by it to discharge, or lent by it to ECI to discharge, the AIFC Secured Debt, the ANZ Secured Debt and the Unsecured Creditors;
  - 2·3·2 second, the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to be retained by WIL to reimburse it for having paid the costs, estimated by WIL as being necessary to maintain the Total Assets prior to such sale;
  - 2·3·3. third, such sum, as shall be certified by WIL's Auditors, as is necessary to reimburse WIL to cover the actual interest, borrowing and other associated charges incurred by WIL in funding the payments made by WIL and referred to in Clauses 2·3·1 and 2·3·2 above;
  - 2·3·4 fourth, the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to be retained by WIL on account of moneys required to discharge the Minister's Secured Debt pursuant to Clause 3·1 below;
  - 2·3·5 fifth, such sum as is required by WIL to discharge WIL's Secured Debt;
  - 2·3·6 sixth, the sum of TEN MILLION SEVEN HUNDRED AND TWENTY NINE THOUSAND AND THIRTY NINE DOLLARS (\$10,729,039) to the Minister for the Sale Shares; and
  - 2·3·7 seventh, the balance to be distributed equally among the then shareholders of ECI pursuant to the terms of, and the order of priority laid down in, the Articles of Association of ECI;
- 2·4 The parties hereby agree:—
- 2·4·1 to use their respective best endeavours to procure, or to have procured, the approval of the Board of Directors of ECI to the sale and transfer of the Sale Shares by the Minister to WIL and the making of appropriate entries into the ECI share register to give effect thereto; and
  - 2·4·2 THAT the Minister shall deliver to WIL on the date when the conditions precedent in clause 7 below shall have been satisfied duly executed and in a form acceptable to the Board of Directors of ECI and duly stamped, a share transfer for the Sale Shares in favour of WIL together with the share certificates issued by ECI in respect of the Sale Shares.

- 2·5 THE Minister warrants that he is the registered holder and beneficial owner of the Sale Shares free and clear of any liens, charges, encumbrances, pledges, options or interests of any kind whatsoever and has full power and authority to transfer good and valid title to the same.
- 2·6 THE parties further agree that, immediately following the Pioneer Implementation and the acceptance by the Unsecured Creditors of a new scheme for their repayment, the Minister will procure the written resignation of Peter Gwyn Morgan as a Director of ECI which shall be handed to WIL by the Minister together with an acknowledgement, in written form, that the said Peter Gwyn Morgan has no claim against ECI of any nature whatsoever for loss of office.
- 2·7·1 WIL agrees that if at any time ECI is able to utilise its losses as an allowable deduction against any assessable income which might be derived by ECI, other than income that may be derived from the Insurance Claim, in the then current or any future year of income then and in any such case WIL will pay to the Minister an amount equal to Fifty percent of the amount of income tax which would have been payable had the losses not been so allowable and utilised and each such payment shall be made to the Minister within Sixty (60) days of the receipt by ECI of an income tax assessment determined on the basis that such losses are so allowed and utilised;
- 2·7·2 In the event of ECI being required to pay tax at any time as a result of a re-assessment being made which has the effect of disallowing the previously allowed tax losses in whole or in part then the Minister shall repay the relative moneys paid to him pursuant to clause 2·7·1 within Sixty (60) days of written demand by ECI;
- 2·7·3 For the purposes of this clause 2·7 the terms "allowable deduction" and assessable income" shall have the same meanings as are assigned to those terms for the purposes of the Income Tax Assessment Act, 1936.
- 2·7·4 WIL will cause ECI to make available to the Minister within Thirty (30) days of the lodgment or receipt of the same copies of all tax returns lodged by ECI with the Deputy Commissioner of Taxation and of all income tax assessments received by ECI in each year when such losses are claimed as allowable deductions and utilised;
- 3 DISCHARGE OF THE MINISTER'S SECURED DEBT
- 3·1 IN the event that the Pioneer Arrangements are entered into by both Pioneer and WIL, WIL agrees to procure ECI to pay to the Minister and the Minister hereby agrees to accept repayment



of the Minister's Secured Debt in the following manner but subject to any earlier repayment out of the Insurance Proceeds referred to in Clause 5 hereof:—

If there is no Pioneer Implementation:—

- 3·1·1 the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) on the 31st December, 1994; and
- 3·1·2 the balance of the Minister's Secured Debt, namely the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000), on the 31st December, 1995;

If there is Pioneer Implementation:—

then from the rentals to be paid by Pioneer to WIL under the Plant Lease made between WIL and Pioneer in accordance with the provisions of the Pioneer Arrangements:—

- 3·1·3. the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) on the 1st April, 1986;
  - 3·1·4. the balance of the Minister's Secured Debt, namely the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000), on the 1st April, 1987.
- 3·2 THE Minister expressly agrees that notwithstanding the terms of any agreements between any of WIL, ECI and the Minister to the contrary, the Minister will accept the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) in full and final satisfaction and discharge of the Minister's Secured Debt and that no further interest shall be payable on the repayment of the Minister's Secured Debt in the manner set out in Clause 3·1.
- 3·3 In consideration of the agreement referred to in Clause 3·1 above, the Minister shall, on the date hereof, hand over to WIL, duly and properly executed and in registerable form, discharges of the Floating Debenture Charges Nos. 6481/12/136, and 6638/12/136 registered at the Tasmanian Corporate Affairs Commission and duly and properly executed and in registerable form a discharge of the Mortgage Numbered A559368 registered at the Tasmanian Land Titles Office.

#### 4 UNSECURED CREDITORS

WIL acknowledges that in the event that there is the Pioneer Implementation WIL will ensure that ECI will pay the Unsecured Creditors at the times and in the order of priorities specified in this Agreement.

#### 5 INSURANCE CLAIM

- 5·1 Within Seven (7) days of the Minister with the approval of the Parliament of Tasmania completing the sale of the Sale Shares, WIL will procure ECI to grant to the Minister the option to participate in the Insurance Claim on the following terms and conditions:—

- 5.1.1. such option is to be exercised by the Minister by letter in writing delivered to WIL within Thirty (30) days of the date of the receipt by the Solicitor General of the documents referred to in Clause 5.1.2.;
  - 5.1.2. to assist the Minister in determining whether or not to exercise the option WIL will cause ECI's solicitors to make available to the Solicitor General for the State of Tasmania as soon as practicable after the signing of this agreement all pleadings, proofs of evidence, opinions and other documents relative to the Insurance Claim (subject to appropriate undertakings as to confidentiality being provided);
- 5.2 IN the event that the Minister exercises his option as provided in Clause 5.1.1., then he shall be entitled to participate with WIL and ECI in the Insurance Claim upon and subject to the following terms and conditions:—
- 5.2.1. The Minister will if competent so to do participate in the Insurance Claim as a co-plaintiff and if so competent will sign and do all such acts matters and things as are necessary at all times to comply with the requests of ECI and the solicitors representing ECI in making any necessary application to join him as a plaintiff.
  - 5.2.2. the Costs up to the date of this Agreement, to the extent that the same have not been paid by others, shall be Borne by WIL. In this Clause 5, "Costs" means all legal, accounting and other charges and associated expenses and disbursements incurred in the conduct and prosecution of the Insurance Claim and "Borne" envisages by way of loan to ECI;
  - 5.2.3. the Costs after the date of this Agreement, to the extent that the same shall not have been paid by others, shall be Borne by WIL and the Minister in equal shares;
  - 5.2.4. WIL and the Minister shall collaborate and co-operate and do all such things as shall be necessary to ensure the proper and effective conduct and prosecution of the Insurance Claim including, but not limited to:—
    - 5.2.4.1. the issuing of all necessary instructions to the solicitors representing ECI who shall also represent the Minister; and
    - 5.2.4.2 the furnishing of all evidentiary material including agreements, accounts and other documents required by such solicitors for the purposes of the Insurance Claim,
 and both parties shall ensure that the Insurance Claim is at all times proceeded with without delay;

- 5.2.5 neither the Minister nor WIL will, and WIL will ensure that ECI does not, compromise or settle the Insurance Claim for any amount less than the full amount claimed in the Insurance Claim nor will either discontinue the action without first obtaining the written agreement of the other to the terms of any such compromise or settlement or to such discontinuance, such agreement not to be unreasonably withheld;
- 5.2.6 in the event that ECI or any other Plaintiff in the Insurance Claim recovers any moneys in the Insurance Claim ("the Insurance Proceeds"), then WIL will take such steps as shall be necessary to cause ECI to apply those moneys in the following order of priority:—
- 5.2.6.1 firstly, in payment to WIL of an amount equal to the total of the Costs Borne by it in accordance with the provisions of Clause 5.2.2;
- 5.2.6.2 secondly, in payment to WIL and the Minister, pro rata, of amounts equal to the total of the Costs Borne by them respectively in accordance with the provisions of Clause 5.2.3;
- 5.2.6.3 thirdly, in payment to the Unsecured Creditors of moneys owing to them (if any) and/or if any Unsecured Creditors of ECI have been paid out by ECI or, whether directly or indirectly, by WIL, then in payment to WIL of an amount equal to the aggregate of the amounts owing to those Unsecured Creditors by ECI at the 31st March, 1984.
- 5.2.6.4. fourthly, in payment to the Minister of moneys then owing in respect of the Minister's Secured Debt (if any),
- 5.2.6.5 fifthly, in payment to WIL of the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to reimburse WIL for having paid the costs necessary to maintain the Total Assets up to the recovery of moneys in the Insurance Claim; and
- 5.2.6.6. thereafter in accordance with legal entitlements of interested persons;
- 5.2.7 IN the event of the Pioneer Implementation and ECI (or WIL or any related corporation of WIL) receiving the Insurance Proceeds then in addition to the provisions of clause 5.2.6 the following provisions shall apply:—
- 5.2.7.1 the starting date for the periods under Clause 2.2.1 above (1st January, 1995) shall be accelerated by one month for every complete SIXTEEN THOUSAND SIX HUNDRED AND

SIXTY SIX DOLLARS (\$16,666) of Net Recovery. For the purpose of this Clause 5·2·7·1. "Net Recovery" means the Insurance Proceeds less the aggregate of the Costs referred to in Clause 5·2·6·1. and 5·2·6·2 above PROVIDED THAT in the event that the application of the formula for acceleration contained in this clause establishes a starting date earlier than the date on which such Insurance Proceeds are received by ECI (or WIL or any related corporation of WIL) then and in such case WIL will pay to the Minister an amount equal to the total of the moneys that would have been retained by the Minister under the provisions of clause 2·2·1 (a) (i) and (ii) during such period had he been in receipt of rentals from Pioneer under the Pioneer Lease throughout such period as though the dates for such rental payments had been accelerated in the like manner as the starting date for the periods under this clause. Such payment by WIL shall be made within Seven (7) days of the receipt by ECI (or WIL or any related corporation of WIL) of the Insurance Proceeds or any part thereof. Thereupon the starting date for the balance of the moneys to be retained by the Minister pursuant to clause 2·2·1 shall be the date on which the next rental payment is due to be made by Pioneer under the Pioneer Lease;

5·2·7·2 the final date for the periods under Clause 2·2·1 above (31st December, 2022) shall be accelerated so that the Minister receives under that Clause 2·2·1 and the proviso to clause 5·2·7·1 the identical amount that he would have received if there had been no accelerated starting date under Clause 5·2·7·1 above.

## 6. GENERAL

6·1 WIL agrees with the Minister that, in the event that there is no Pioneer Implementation, WIL will consult with the Minister as to ECI and its future existence and conduct of business and in the event that the parties are unable to agree upon appropriate terms or conditions in relation thereto then WIL agrees to immediately commence proceedings to wind up ECI.

6·2·1 The Minister and WIL agree to take, or cause to be taken, such steps as may reasonably be required to give effect to the matters contained in this Agreement including, but not limited to, the passing of all such resolutions as shall be necessary or reasonably required;

- 6.2.2 Recognising that the Pioneer Arrangements require the Assets to be transferred from ECI to WIL, the Minister hereby waives any power of veto or other like power he might otherwise have had in respect of such sale.
- 6.3 IF any moneys payable or receivable by any of the parties to the Agreement are not paid or received on or before the due date for payment or receipt as provided herein, the amount so payable or receivable shall bear interest from the due date for payment or receipt as provided herein until the date of actual payment or receipt at the rate or rates of interest being charged by the Commonwealth Trading Bank of Australia during the relevant period in respect of working account overdraft advances of amounts equal to the amount unpaid or not received made by that Bank in Tasmania and such rate of interest shall apply in respect of any judgment which may be obtained by the party entitled to receive such payments or to such receipts.
- 6.4 THIS Agreement shall be governed by and construed in accordance with the laws of the State of Tasmania and the parties hereto hereby submit to the exclusive jurisdiction of the Courts of that State in connection with any action or proceeding arising out of or related to this Agreement and the parties accordingly hereby waive any objection they might otherwise have had to the jurisdiction of such Courts.
- 6.5 ANY notice, demand, consent in writing or other communication requiring to be made, or given, under this Agreement shall be deemed to have been duly made or given when delivered in writing or sent by post or telex to the party to which such notice or demand is required or permitted to be given, in the case of WIL, at its registered office for the time being in New South Wales and, in the case of the Minister, at his principal office in the State of Tasmania and in the case of telex, to the listed telex number of the respective parties.
7. THIS Agreement is expressly made subject to the following conditions which the parties agree are conditions precedent namely, the obtaining by the Minister of the approval of the Parliament of Tasmania to the terms of this Agreement and the passage of such legislation as is required to ratify approve or confirm this Agreement or to empower the Minister to enter into and complete and enforce this Agreement. If both of these conditions precedent are not satisfied on or before the 31st day of May 1984 this Agreement shall be at an end.

IN WITNESS WHEREOF the parties hereto have executed this Agreement  
this 11th day of April 1984

SIGNED for and on behalf of WHITE  
INDUSTRIES LIMITED by

in the presence of:—

} G. B. WHITE  
Chairman

A. D. EASTERBROOK

SIGNED by ROBIN TREVOR GRAY }  
in the presence of:

} ROBIN GRAY

P. G. MORGAN

## SCHEDULE 2

## Section 4 (2)

## SHARE SALE AGREEMENT

THIS AGREEMENT is made the 11th day of April 1984

BETWEEN THE HONOURABLE ROBIN TREVOR GRAY Premier of the State of Tasmania being the Minister administering the Carbide Industry Development Act 1976 as amended (Tasmania) (hereinafter called "the Vendor") of the one part

AND PIONEER CONCRETE SERVICES LIMITED, a company incorporated in the State of New South Wales and having its registered office therein at 63 Grove Street, St. Peters (hereinafter called "the Purchaser") of the second part

## RECITALS

- A. The Vendor is the registered holder and beneficial owner of one million (1,000,000) fully paid preference shares of one dollar (\$1.00) each (hereinafter called "the Shares") in the capital of Electrona Carbide Industries Limited (hereinafter called "the Company") a company incorporated in Tasmania.
- B. The Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to buy from the Vendor, the Shares at the price and upon and subject to the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED AND DECLARED as follows:—

## 1. SALE AND PURCHASE

Subject to the provisions hereof, the Vendor shall sell and transfer to the Purchaser and the Purchaser shall buy from the Vendor, the Shares, free from all liens, charges and encumbrances and together with all rights (including dividend rights) attached or accruing thereto.

## 2. PRICE

The consideration for the sale of the Shares shall be the payment to the Vendor of the sum of two hundred and fifty thousand dollars (\$250,000) (hereinafter called the "Purchase Price") on the dates and in the manner hereinafter provided.

### 3. COMPLETION DATE

Subject as hereinafter provided completion of the sale and purchase of the Shares shall take place on such date as the Purchaser shall notify to the Vendor no less than three (3) business days beforehand (hereinafter called the "Completion Date") at the offices of Messrs. Hand, Ogilvie & Breheny, 6th Floor, 111 Macquarie Street, Hobart Tasmania.

### 4. WARRANTIES

- 4.1 As part of the terms of sale of the Shares the Vendor warrants to the Purchaser as at the date hereof and as at the Completion Date, as follows:—
- (a) The Vendor is the registered holder and beneficial owner of the Shares free and clear of any liens, claims, charges or other encumbrances and has full power and authority to transfer good and valid title to the Shares.
  - (b) The company is duly incorporated under the laws of the State of Tasmania.
  - (c) The execution and delivery of this Agreement by or on behalf of the Vendor and the completion of the transactions contemplated thereby do not result in the breach of the terms and conditions of or constitute a default under any agreement or undertaking, oral or written, or any indenture or instrument to which the Vendor or the Company may be affected or bound or to the best of his knowledge, information and belief, breach any order, writ, rule, regulation, injunction or decree of any court, administrative agency or governmental body or any statute, rule or regulation applicable to the Vendor or the Company or by which either or both of them may be bound.
  - (d) The Shares are validly issued and the par value of \$1.00 each of the Shares has been paid in full and no other amount is payable in respect of the Shares.
  - (e) Except for the consent of the directors of the Company to the registration of the transfer of the Shares, there is no restriction in the memorandum or articles of association of the Company on the sale or transfer of the Shares to the Purchaser.
- 4.2 Each of the warranties contained in sub-clause 4.1:
- (a) shall remain in full force and effect on and after the Completion Date notwithstanding settlement;
  - (b) is and shall be given to the intent that liability thereunder shall not be confined to breaches thereof discovered prior to the Completion Date; and
  - (c) may be construed by the Purchaser before settlement as a condition.



## 5. SETTLEMENT

- 5·1 On the Completion Date the Vendor shall deliver to the Purchaser a duly executed and completed transfer of the Shares in favour of the Purchaser together with the appropriate share certificates in respect of the Shares.
- 5·2 Subject to the due performance by the Vendor of the obligations on its part to be performed pursuant to sub-clause 5·1 and otherwise as herein provided the Purchaser shall pay the Vendor the Purchase Price as follows:
- (a) on the Completion Date, an amount of twenty-five thousand dollars (\$25,000·00) by way of bank cheque drawn in favour of the Vendor;
  - (b) on each anniversary of the Completion Date for the succeeding nine (9) years, an amount of twenty-five thousand dollars (\$25,000·00) by way of bank cheque drawn in favour of the Vendor.

## 6. GENERAL

- 6·1 Save as provided by sub-clause 6·2, the Vendor shall be responsible for its own costs and expenses and the Purchaser shall be responsible for its own costs and expenses in connection with and incidental to the preparation and carrying into effect of this Agreement.
- 6·2 Stamp duty (if any) on this Agreement and stamp duty on the transfer of the Shares shall be paid by the Purchaser.
- 6·3 The Purchaser may, at any time by notice to the Vendor, assign any or all of its rights hereunder to any corporation, trust or other entity or unincorporated joint venture in which the Purchaser or any subsidiary of the Purchaser holds at least a fifty percent (50%) equity interest and which can be shown to the reasonable satisfaction of the Vendor to have the financial capacity to meet the obligations of the Purchaser under this Agreement PROVIDED THAT:
- (a) the Purchaser shall guarantee that the Purchase Price is paid to the Vendor;
  - (b) the Vendor shall be deemed to be satisfied as to the financial capacity of the assignee if in addition to the guarantee under paragraph (a) above the Purchaser guarantees the performance by the assignee of the Purchaser's other obligations hereunder; and
  - (c) the Purchaser retains at least Fifty per centum (50%) equity interest in the assignee until the completion of all obligations to be performed by the assignee hereunder.
- 6·4 The Vendor and the Purchaser shall sign, execute and deliver all such documents, instruments and writings and shall do all such other acts and things as may be necessary or desirable to give full effect to this Agreement.

- 6.5 This Agreement contains the entire understanding of the parties with reference to the subject matter and there is no other understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions hereof or binding on the parties hereto with respect to the sale of the Shares or any of the matters to which these presents relate.
- 6.6 All notices, consents, approvals and other communications required or permitted to be given hereunder shall be in writing and shall be delivered or sent by telex or registered mail:
- If to the Vendor, to:
- Messrs. Hand, Ogilvie & Breheny,  
6th Floor,  
111 Macquarie Street,  
Hobart, Tas.  
Attention: Mr. Hand  
Telex: AA58146 HOB
- If to the Purchaser, to:
- Pioneer Concrete Services Limited,  
55 Macquarie Street,  
Sydney, N.S.W. 2000  
Attention: Chief General Manager, Minerals and Energy  
Telex: AA21556 PICON
- or to such other address as the recipient shall previously have notified to the sender. Any communication sent by telex shall be deemed to have been received on the date of despatch (with answerback received and no evidence of garbling). Any communication sent by post shall be deemed to have been received on the third day following the day of posting.
- 6.7 Notwithstanding anything to the contrary expressed or implied herein, if the Purchaser at its sole and unfettered discretion (subject to the proviso below) shall fail before 1st July, 1985 for any reason whatsoever to nominate a completion date pursuant to Clause 3, then this Agreement shall lapse and shall cease to be of any effect whatsoever, and neither party hereto shall have any further obligations to the other hereunder or any claim for damage or loss whatsoever against the other PROVIDED THAT if the Purchaser has given notice of its intention to complete the acquisition of certain of ECI's assets pursuant to the Pioneer Arrangements then the Purchaser shall be bound to give a notice pursuant to Clause 3 hereof notifying the completion date not later than 31st July, 1985.
- 6.8 This Agreement shall be governed by and construed in accordance with the law of the State of Tasmania and the parties hereby consent to the jurisdiction of the courts in the said State.

7. This Agreement is expressly made subject to the following conditions which the parties agree are conditions precedent namely, the obtaining by the Minister of the approval of the Parliament of Tasmania to the terms of this Agreement and the passage of such legislation as is required to ratify approve or confirm this Agreement or to empower the Minister to enter into and complete and enforce this Agreement. If both of these conditions precedent are not satisfied on or before the 31st day of May 1984 this Agreement shall be at an end.

IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first hereinbefore written.

SIGNED by THE HONOURABLE  
ROBIN TREVOR GRAY in the  
presence of:— } ROBIN GRAY

P. G. MORGAN

SIGNED for and on behalf of  
PIONEER CONCRETE SERVICES  
LIMITED by  
thereunto duly authorised in the  
presence of: } J. DE C. GRAY

F. J. CHILTON

## SCHEDULE 3

Section 4 (3)

## SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made the 11th day of April 1984

BETWEEN ROBIN TREVOR GRAY being and as the Minister for the time being of the State of Tasmania administering the Carbide Industry Development Act, 1976 as amended (" the Minister ");

WHITE INDUSTRIES LIMITED a New South Wales corporation having its registered office at 201 Pacific Highway North Sydney in that State (" WIL ")

AND

PIONEER CONCRETE SERVICES LIMITED a New South Wales corporation having its registered office at 63 Grove Street, St. Peters in that State (" Pioneer ")

and is SUPPLEMENTAL to an agreement between the Minister and WIL of even date (" the Principal Agreement "), to the Pioneer Agreement hereinafter defined and to an agreement between the Minister and Pioneer of even date (" the Share Sale Agreement ")

## RECITALS:

- A. THE Principal Agreement and the Share Sale Agreement make reference to the " Pioneer Arrangements ";
- B. THE parties wish to identify the " Pioneer Arrangements " for the purposes of the Principal Agreement and the Share Sale Agreement;

## NOW IT IS AGREED:

1. THE Pioneer Arrangements are those to be constituted by an agreement to be made between WIL and Pioneer (" the Pioneer Agreement ") in accordance with an agreement to execute the Pioneer Agreement made between the same parties dated the 11th day of April, 1984. A true copy of the Pioneer Agreement and a true copy of the Agreement to execute (without its annexures) have been delivered to Mr. R. J. Hand of Hand, Ogilvie & Breheny, 6th Floor, 111 Macquarie Street, Hobart to be held by that firm on and subject to the terms and conditions of the form of acknowledgement attached to this Agreement.
2. WIL subject to due compliance by the Minister with his obligations under the Principal Agreement agrees that it will not without the prior written consent of the Minister amend, add to terminate or otherwise vary or agree to amend, add to, terminate or otherwise vary the Pioneer Agreement, such consent to not be unreasonably withheld, and further that WIL will take all appropriate steps to enforce the said Pioneer Agreement in the event of a breach thereof by Pioneer and further that

no action or claim made by WIL for the purpose of enforcing the said Pioneer Agreement against Pioneer shall be discontinued withdrawn or settled upon terms other than terms previously approved in writing by the Minister, such approval not to be unreasonably withheld.

- 3. Pioneer agrees that it will not without the prior written consent of the Minister, not to be unreasonably withheld, amend, add to, terminate or otherwise vary or agree to amend, add to, terminate or otherwise vary the Pioneer Agreement in any manner which would have the effect of lessening the payments to be made by Pioneer under the Pioneer Agreement to WIL and Pioneer further agrees that it will take all appropriate steps to enforce the Pioneer Agreement against WIL in the event of a breach thereof by WIL and further agrees that no action or claim made by Pioneer for the purpose of enforcing the said Pioneer agreement against WIL shall be discontinued, withdrawn or settled upon terms which would lessen the payments to be made by Pioneer to WIL.

IN WITNESS whereof the parties hereto have executed this Agreement.

SIGNED by ROBIN TREVOR GRAY  
being and as the Minister for the time  
being of the State of Tasmania administer-  
ing the Carbide Industry Development  
Act, 1976 as amended in the presence  
of:—

ROBIN GRAY

P. G. MORGAN

SIGNED for and on behalf of WHITE  
INDUSTRIES LIMITED by  
its duly constituted Attorney in the  
presence of:—

TRAVERS W. DUNCAN

R. J. MARSHALL

SIGNED for and on behalf of PIONEER  
CONCRETE SERVICES LIMITED by  
its duly constituted Attorney in the  
presence of:—

J. DE C. GRAY

F. J. CHILTON

## SCHEDULE 4

Section 4 (4)

## ACKNOWLEDGEMENT

WE acknowledge having received a copy of the agreement to be executed between Pioneer Concrete Services Ltd. ("Pioneer") and White Industries Ltd. ("Whites") ("the Pioneer Agreement") on the following basis:—

1. THE Pioneer Agreement will be kept as a confidential document in this firm's principal offices in the City of Hobart or in such office of its successors in title.
2. NO copies of the Pioneer Agreement or any part thereof will be made without our first obtaining the written consent of Pioneer and Whites;
3. THE contents of the Pioneer Agreement can be disclosed on a confidential basis to the Minister from time to time and for the time being administering the Carbide Industry Development Act, 1976 or other amending or enabling legislation ("the Minister") the head of the Minister's Department, the Solicitor General, Mr. P. G. Morgan being and as the Special Adviser to the Minister and his successors in title (if any) and Mr. M. E. Siddall, Chartered Accountant of Hobart and to such other persons as Pioneer and Whites consent to in writing such consent not to be unreasonably withheld.

PROVIDED THAT nothing contained in this acknowledgement shall in any way restrict us on behalf of the Government from using the document in any proceedings which may be necessary for the enforcement of the Minister's rights against Whites under an agreement made on the 11th day of April 1984.

DATED this 12th day of April 1984

HAND OGILVIE & BREHENY  
per R. J. HAND

AND the Minister has joined in this acknowledgement for the purpose of confirming his approval of its terms and to acknowledge that other than any proceedings contemplated by the above proviso, he will accept advice as to the terms of the Pioneer Agreement without being entitled to call for a copy of it other than as permitted by Pioneer and Whites and will preserve its confidentiality.

DATED this 12th day of April 1984.

SIGNED by ROBIN TREVOR GRAY  
being and as the Minister for the time  
being of the State of Tasmania administering  
the Carbide Industry Development  
Act 1976 as amended in the presence  
of:—

} ROBIN GRAY

P. G. MORGAN