

29 02409

12 May 1994

Certified a true and
complete copy of
the original.

Freshfields

6 August 1996.

ENGLISH CHINA CLAYS plc

CAMAS plc

DEMERGER AGREEMENT



FRESHFIELDS

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A DEMERGER AGREEMENT made on 12 May 1994

BETWEEN

ENGLISH CHINA CLAYS PLC a company incorporated in England with registered number 154236 and having its registered office at 1015 Arlington Business Park, Theale, Reading RG7 4SA (**ECC**); and

CAMAS PLC a company incorporated in England with registered number 2902409 and having its registered office at Regent House, Rodney Road, Cheltenham, Gloucestershire GL50 1HX (**CAMAS**),

WHEREAS

(A) Marchmont Holdings Limited is a wholly owned subsidiary of ECC and the holding company of ECC's construction materials division.

(B) ECC and CAMAS have agreed on the terms of this Agreement that ECC will, pursuant to a scheme of reconstruction of ECC, transfer the entire issued share capital of Marchmont Holdings Limited to CAMAS in consideration for which CAMAS will allot and issue, credited as paid up, the CAMAS Demerger Shares to Qualifying ECC Shareholders in satisfaction of the Demerger Dividend.

(C) The CAMAS Shareholders have undertaken to ECC and CAMAS that, at the Record Time, they will hold the Subscribers' Shares and be members of CAMAS. The CAMAS Shareholders have also agreed that their entitlement to receive CAMAS Demerger Shares will be reduced by such number as corresponds to the number of Subscribers' Shares held by them at the Record Time.

(D) This Agreement sets out the terms on which the Demerger is to be effected and certain terms on which relations between the ECC Group and the CAMAS Group will be governed following Completion.

INTERPRETATION

1.1 Certain words and expressions used in this Agreement are defined in schedule 1.

1.2 The schedules to this Agreement form part of this Agreement and shall have effect as if set out in full in it. References to *this Agreement* shall include reference to the schedules.

CONDITIONS

2.1. The obligations of the parties under 3 and under clauses 6 to 12 (inclusive) and clauses 14, 15, 16 and 17 are conditional on the passing of the Demerger Resolution and Admission to Listing.

2.2. The parties shall use all reasonable endeavours to ensure fulfilment of the Conditions. If the Conditions are not satisfied by 30 June 1994 (or such other date as the parties may agree), this Agreement shall automatically terminate and neither party shall have any claim of any nature whatsoever against the other under this Agreement.

TRANSFER OF SHARES IN MARCHMONT HOLDINGS LIMITED

3.1. ECC as beneficial owner shall transfer with effect from Admission to Listing, and CAMAS agrees to acquire, the Marchmont Holdings Shares free from all security interests, options, equities, claims or other third party rights (including rights of pre-emption) of any nature whatsoever and together with all rights attaching to them.

3.2. In consideration of the transfer of the Marchmont Holdings Shares, CAMAS shall allot to Qualifying ECC Shareholders (save as provided below in relation to the holders of Subscribers' Shares) one CAMAS Demerger Share for each ordinary share of 25p in the capital of ECC held at the Record Time, in satisfaction of the Demerger Dividend.

3.3. The number of CAMAS Demerger Shares to be allotted to each Qualifying ECC Shareholder holding a Subscribers' Share at the Record Time shall be reduced by one for each Subscribers' Share held by him.

3.4. The CAMAS Demerger Shares shall be allotted credited as fully paid and shall rank *pari passu* in all respects with the Subscribers' Shares. Immediately after the Record Time, ECC shall make available to CAMAS the names and addresses of the Qualifying ECC Shareholders who are entitled to receive the Demerger Dividend.

COMPLETION

4.1 On or before 12 noon on 31 May 1994 (or such other time as the parties may agree) ECC shall deliver to CAMAS, subject only to Admission to Listing, duly executed transfers of the Marchmont Holdings Shares in favour of CAMAS, together with the relative share certificates and a power of attorney in the agreed terms.

4.2. CAMAS shall ensure that the names of the Qualifying ECC Shareholders to whom CAMAS Demerger Shares are allotted pursuant to this Agreement are entered in the register of members of CAMAS immediately after Admission to Listing as the holders of the CAMAS Demerger Shares allotted to them.

NO WARRANTIES, ETC

5. Save for the warranties of title implied or inherent in the terms of the transfer of the Marchmont Holdings Shares pursuant to clause 3.1 and as otherwise expressly stated in this Agreement, no warranties, representations, undertakings or indemnities are given by ECC with regard to the Marchmont Holdings Shares or the assets, liabilities or business of Marchmont Holdings Limited or of any of its subsidiaries, nor are the same to be implied.

DEBTS

6. ECC and CAMAS hereby confirm that neither of them is aware of the existence of any intercompany loan accounts outstanding between any member of its group and any member of the other's group and agree that if any intercompany loans are discovered they shall be repayable forthwith. ECC and CAMAS further confirm that all other intercompany debts of any member of its group to any member of the other's group shall be repayable in the ordinary course of trading or within 30 days after Admission to Listing, where no payment period is specified in the ordinary course of trading.

CONTRACTS ETC

Novation

7.1 ECC and CAMAS shall together use reasonable endeavours to procure that the third parties to the ECC Contracts listed in part 1 of schedule 2 agree:

- (a) to the release of each ECC Assignor from any liabilities or obligations under those ECC Contracts insofar as such liabilities or obligations relate to a CAMAS Company; and
- (b) to the substitution of the CAMAS Assignee in place of each ECC Assignor as the person (A) entitled to the benefits, rights and privileges enjoyed by such ECC Assignor insofar as such benefits, rights and privileges relate to a CAMAS Company and (B) bound by the liabilities or obligations of such ECC Assignor thereunder insofar as such liabilities or obligations relate to a CAMAS Company,

and forthwith upon such agreement being given in respect of such a contract, ECC and CAMAS shall procure that such release and substitution is effected.

Release of ECC Company obligations under guarantees, etc

7.2 CAMAS undertakes to ECC:

- (a) that it will use reasonable endeavours to procure that each ECC Company which has liabilities or obligations under the ECC Contracts

listed in part 2 of schedule 2 is fully and effectively released from such liabilities and obligations; and

- (b) that, if CAMAS is notified within a period of two years from Completion that any ECC Company has entered into or given prior to Completion any guarantee, indemnity, bond, security or collateral obligation other than under the ECC Contracts listed in part 2 of schedule 2 in respect of any CAMAS Company or any liabilities or obligations of any CAMAS Company, CAMAS will use reasonable endeavours thereafter to procure that such ECC Company is fully and effectively released from its liabilities or obligations under such guarantee, indemnity, bond, security or collateral obligation.

Release of CAMAS Company obligations under guarantees, etc

7.3 ECC undertakes to CAMAS that, if ECC is notified within a period of two years from Completion that any CAMAS Company has entered into or given prior to Completion any guarantee, indemnity, bond, security or collateral obligation in respect of any ECC Company or any liabilities or obligations of any ECC Company, ECC will use reasonable endeavours thereafter to procure that such CAMAS Company is fully and effectively released from its liabilities and obligations under such guarantee, indemnity, bond, security or collateral obligation.

Joint purchasing agreement

7.4.1 ECC and CAMAS shall together use reasonable endeavours to procure that the contract reference 0131/91 (the *PowerGen Contract*) dated 1 July 1991 between PowerGen plc and ECCI is novated such that there is transferred to ECC CM the benefits, rights, privileges, liabilities and obligations of ECCI thereunder in relation to the supply of electricity to sites used or occupied by the CAMAS Group (*CAMAS Sites*). Pending such novation, provided that CAMAS complies with its obligations under clause 7.4.2, ECC shall procure that ECCI shall hold such benefits, rights and privileges as trustee for ECC CM and shall, at ECC CM's request and expense, take all such steps as ECC CM may reasonably require to enforce such rights and privileges.

7.4.2 CAMAS undertakes to ECC (for itself and as agent and trustee for ECCI):

- (a) that it will ensure that all liabilities and obligations of ECCI in respect of the supply of electricity to the CAMAS Sites under the PowerGen Contract are duly and promptly discharged; and
- (b) to hold harmless and keep fully and effectively indemnified (on an after tax basis) ECCI against any liabilities and obligations ECCI may have under or in respect of the PowerGen Contract in relation to the supply

of electricity to the CAMAS Sites and all costs, charges and out-of-pocket expenses which ECCI may properly and reasonably incur thereunder in relation to such supply.

7.4.3 ECC undertakes to CAMAS (for itself and as agent and trustee for ECC CM):

- (a) that it will ensure that all liabilities and obligations of ECCI in respect of the supply of electricity other than to the CAMAS Sites under the PowerGen Contract are duly and promptly discharged; and
- (b) to hold harmless and keep fully and effectively indemnified (on an after tax basis) ECC CM against any liabilities and obligations ECC CM may have under or in respect of the PowerGen Contract in relation to the supply of electricity other than to the CAMAS Sites and all costs, charges and out-of-pocket expenses which ECC CM may properly and reasonably incur thereunder in relation to such supply.

Haul-Waste Agreement

7.5 CAMAS undertakes with ECC (for itself and as agent and trustee for ECC Overseas Investments Limited) that if:

- (a) pursuant to clause 23.2 of the Haul-Waste Agreement ECC and ECC Overseas Investments Limited (the *Vendors*) are required to procure that any CAMAS Company grants rights over any Retained Land (as defined in that clause) which is owned by that CAMAS Company; and
- (b) the Vendors give notice thereof to CAMAS within 14 days of the Vendors becoming aware of such requirement,

CAMAS will procure that such CAMAS Company will grant such rights to Haul-Waste Limited provided that (a) such CAMAS Company is actually able to grant such rights and (b) such grant may include and be subject to such terms and conditions as that CAMAS Company considers reasonable including Haul-Waste Limited paying reasonable compensation for any damage caused to the Retained Land or interference with the business carried out thereon insofar as such damage and/or interference results from the grant of such rights.

UNDERTAKINGS AND INDEMNITIES

Benefit of contracts to be held on trust

8.1 Pending the effective novation pursuant to clause 7 of all the benefits, rights and privileges enjoyed by an ECC Assignor under an ECC Contract, provided CAMAS complies with its obligations under clause 8.2 in relation to the ECC Contract concerned, ECC shall, and shall procure that the relevant ECC Assignor shall, hold such benefits, rights and privileges as trustee for the

CAMAS Assignee and shall, at the CAMAS Assignee's request and expense, take all such steps as the CAMAS Assignee may reasonably require to enforce such rights and privileges.

Indemnities by CAMAS

8.2 CAMAS undertakes to ECC (for itself and as agent and trustee for each other entity in the ECC Group):

- (a) that it will ensure that all liabilities and obligations of an ECC Assignor under or in respect of any ECC Contract are duly and promptly discharged; and
- (b) to hold harmless and keep fully and effectively indemnified (on an after tax basis) ECC and each other ECC Company against any liabilities and obligations ECC or any other ECC Company may have under or in respect of any ECC Contract and all costs, charges and out-of-pocket expenses which may properly and reasonably be incurred by any of them in connection with such ECC Contract.

Indemnities by ECC

8.3 ECC undertakes to CAMAS (for itself and as agent and trustee for each other entity in the CAMAS Group) to hold harmless and keep fully and effectively indemnified (on an after tax basis) CAMAS and each other CAMAS Company against all liabilities and obligations CAMAS or any other CAMAS Company may have under or in respect of any CAMAS Guarantee and all costs, charges and out-of-pocket expenses which may properly and reasonably be incurred by any of them in connection with any CAMAS Guarantee.

Environment, etc

8.4.1 CAMAS will pay and discharge all Environmental Liabilities subject to an amount not to exceed the Retention Limit. In pursuance thereof CAMAS hereby undertakes to ECC (for itself and as agent and trustee for each other ECC Company) that it will indemnify ECC and each other ECC Company (on an after tax basis) with respect to all and any such Environmental Liabilities which ECC has incurred or may incur which, taken together with the amount of such Environmental Liabilities paid and discharged by CAMAS, does not exceed the Retention Limit (other than any moneys paid or costs and expenses incurred by ECC prior to the Demerger).

8.4.2 When, and in so far as, the total amount incurred in paying or otherwise discharging the Environmental Liabilities exceeds the Retention Limit ECC and CAMAS will each contribute in the Agreed Shares to all further amounts required to pay or discharge the Environmental Liabilities **PROVIDED THAT**, and to the extent that, such Environmental Liabilities arise from the use

of the Restored Properties as waste disposal and land-fill sites prior to the Demerger.

8.4.3 ECC and CAMAS will each give to the other immediate notice in writing upon becoming aware of any claim or matter likely to give rise to a claim, which may give rise to, or have a material effect on, any Environmental Liabilities. Following such notification ECC and CAMAS will exchange promptly all relevant information which either may have and consult with the other concerning the identification and implementation of responses to such claim or matter, such exchanges and consultations to include, where appropriate, but not to be limited to the following:

- (a) any communications with third parties;
- (b) negotiations, including settlement negotiations, with competent authorities or other third parties;
- (c) the defending or resisting of any claim or action,

PROVIDED THAT nothing in this clause 8.4.3 shall prevent or restrict CAMAS from undertaking any investigation, clean-up, remediation or abatement of Pollution on, or arising from, the Restored Properties and **PROVIDED FURTHER THAT** where such action extends to settlement negotiations the parties will use all reasonable efforts to consult with each other before such settlement is reached. CAMAS and ECC shall keep each other informed of any costs and expenses incurred by it as specified in paragraphs (b) and (d) of the definition of Environmental Liabilities in Schedule 1.

Treatment of contingent liabilities

8.5 If any claim for payment under the previous provisions of this clause is based on a liability which is contingent only or not yet due, except in respect of costs, fees and expenses reasonably incurred, the indemnifying party shall not be liable to make any payment in respect of the claim unless and until the contingent liability becomes an actual liability or becomes due.

Where the indemnified party recovers from third party

8.6 If, after the indemnifying party has made a payment to the indemnified party pursuant to a claim under the previous provisions of this clause, the indemnified party shall effect any reimbursement or recovery or receive any benefit or credit in respect of the subject matter of the claim, then the indemnified party shall forthwith repay to the indemnifying party (a) the amount reimbursed, recovered or received by the indemnified party or the amount that the indemnified party will save by virtue of the payment or the benefit or credit (less any taxation payable and all expenses incurred by the indemnified party in respect thereof) or (b) if less, the amount previously paid to the indemnified party.

Obligations of indemnified party

8.7 If any matter that is likely to constitute a claim under the previous provisions of this clause comes to the notice of the indemnified party, then the indemnified party shall:

- (a) not make any admission of liability or make any compromise in relation thereto without the written agreement of the indemnifying party (such agreement not to be unreasonably withheld or delayed);
- (b) inform and keep the indemnifying party informed in respect of such claim and provide reasonable access (including the right to make copies) to all relevant accounts, documents and records within its power, possession or control to enable the indemnifying party and its professional advisers to examine such claim;
- (c) take such action as the indemnifying party may reasonably request to avoid or resist such claim or to compromise the same, subject to the indemnifying party indemnifying the indemnified party (on an after tax basis) in respect of any reasonable costs or out of pocket expenses incurred by the latter in so doing; and
- (d) pursue with reasonable diligence any right of reimbursement or recovery, or right to receive any benefit or credit, in respect of the subject matter of the claim.

Guarantee of CAMAS Bank Facility

8.8 CAMAS undertakes to ECC:

- (a) to enter into the Guarantor Accession Agreement referred to in the Facility Agreement on the date of Admission to Listing or such other date that ECC may agree in writing and thereupon to deliver it to ECC;
- (b) to furnish the Agent (as defined in the Facility Agreement) on the date of Admission to Listing or such other date that ECC may agree in writing with a certificate that there is no Event of Default (as defined in the Facility Agreement) outstanding;
- (c) to hold harmless and keep fully and effectively indemnified (on an after tax basis) ECC against any liabilities and obligations ECC may have under or in respect of the ECC Bank Guarantee and all costs, charges and out of pocket expenses which may properly and reasonably be incurred by ECC in connection with the ECC Bank Guarantee;
- (d) if an Event of Default (as defined in the Facility Agreement) occurs prior to the delivery of the Guarantor Accession Agreement pursuant to paragraph (a), to use all reasonable endeavours to remedy such Event of

Default and to procure that ECC is fully and effectively released from its liabilities and obligations under the ECC Bank Guarantee.

Guarantee of CAMAS Overdraft Facilities and Swaps

8.9 CAMAS undertakes to ECC:

(a) to enter into:

- (i) the guarantee documentation referred to in paragraph 1 of Schedule 1 of each of the Overdraft Guarantees;
- (ii) the guarantee referred to in clause 8(e) of the Sanwa Bank Novation Agreement;
- (iii) each of the guarantees referred to in paragraph 1 of Schedule 1 of each of the New Swap Guarantees

on the date of Admission to Listing or such other date(s) that ECC may agree in writing and thereupon to deliver them to the Banks and deliver copies thereof to ECC;

- (b) to furnish to the relevant bank on the date of Admission to Listing or such other date(s) that ECC may agree in writing with the certificates of no default referred to in clause 1.2(a) of each of the Overdraft Guarantees and New Swap Guarantees;
- (c) to hold harmless and keep fully and effectively indemnified (on an after tax basis) ECC against any liabilities and obligations ECC may have under or in respect of the Overdraft Guarantees, the Sanwa Bank Guarantee and the New Swap Guarantees and all costs, charges and out of pocket expenses which may properly and reasonably be incurred by ECC in connection therewith;
- (d) if a Default (as defined in any of the Agreements referred to in the Overdraft Guarantees or any of the Master Agreements referred to in the New Swap Guarantees) occurs prior to the delivery of the relevant guarantee documentation or guarantees pursuant to paragraph (a), to use all reasonable endeavours to remedy such Default and to procure that ECC is fully and effectively released from its liabilities and obligations under the relevant Overdraft Guarantee or New Swap Guarantee.

Bank Indemnity

8.10 CAMAS undertakes to ECC to hold harmless and keep fully indemnified (on an after tax basis) ECC against any liabilities and obligations ECC may have under or in respect of the General Counter Indemnity given to National

Westminster Bank Plc dated 1st March 1993 insofar as such liabilities and obligations relate to a CAMAS Company.

Contribution

8.11 ECC and CAMAS hereby agree that any losses, liabilities, damages, costs, charges and expenses (collectively *losses*) which they (or either one of them) may incur under or in connection with the indemnity set out in clause 5.5 of the Introduction Agreement in relation to any indemnified claims or indemnified losses referred to therein shall be borne:

- (1) by ECC to the extent that such indemnified claims or indemnified losses arise as a result of any act or omission of ECC;
- (2) by CAMAS to the extent that such indemnified claims or indemnified losses arise as a result of any act or omission of CAMAS ;
- (3) by ECC to the extent that such indemnified claims or indemnified losses arise as a result of claims made by any holder of shares, ADRs or ADS' of ECC, any holders, or any trustee, of any bonds or other instruments issued by ECC, any creditor of ECC, or The Bank of New York, other than to the extent that those indemnified claims or indemnified losses arise as a result of any act or omission of CAMAS; and
- (4) otherwise by ECC and CAMAS in the proportion that their respective market capitalisations at the close of business on the date of Admission to Listing bear to each other,

and each of ECC and CAMAS (the *Indemnifying Party*) shall indemnify the other in respect of any losses to be borne by the Indemnifying Party in accordance with this clause.

USE OF NAMES, LOGOS AND INTELLECTUAL PROPERTY

9.1 Following Completion CAMAS undertakes to ECC (for itself and as agent and trustee for each other entity in the ECC Group):

- (a) subject to sub-clause 9.1(b), to procure that, immediately upon Completion and thereafter, each entity in the CAMAS Group (as it may be comprised from time to time) shall cease in any manner whatsoever to use any name which incorporates the words "English China Clays", "ECC" or "ECC Group" or words which are similar to or reasonably capable of being confused with these names or any other words which suggest a current connection with the ECC Group;
- (b) to procure that, as soon as reasonably practicable after Completion and, in any event, within six months thereof, each entity in the CAMAS Group (as it may be comprised from time to time) shall:

- (i) remove any reference to the words "English China Clays", "ECC" or "ECC Group" and any depiction of the "pit and tip" symbol from any of its livery, stationery, advertising or other documentation whatsoever; and
- (ii) cease in any manner whatsoever to use or display any other trade or service marks, trade or service names, registered designs and other logos now used or the rights in respect of which are (or have previously been) held by any entity in the ECC Group or any colourable imitation of any of the foregoing; and
- (c) to procure that each entity in the CAMAS Group (as it may be comprised from time to time) shall not use the name "Thomas Black" (or an abbreviation thereof) whether as a company business or trading name or otherwise hold itself out as having any contingent connection with Thomas Black Limited or its business.

9.2 Following Completion ECC undertakes to CAMAS (for itself and as agent and trustee for each other entity in the CAMAS Group) not to use, and to procure that no other entity in the ECC Group (as it may be comprised from time to time) shall use, in any manner whatsoever any name which incorporates the word "CAMAS", "Associated Asphalt", "Bituminous", "Bradstone", "Charcon", "Cooley", "Flanagan", "Grinshill", "Lurgain", "Orchard Seating", "Shiely" or "Societe Des Matériaux Moules De L'Ouest", "Cotstone", "Euston", "Kost", "Ronez" or "Meldon" or any colourable imitation of any of the foregoing, or any other words which suggest a current connection with the CAMAS Group.

9.3 Following Completion ECC undertakes to CAMAS (for itself and as agent and trustee for each other entity in the CAMAS Group) for a period of ten years from Completion neither to dispose of or grant any rights to any third party to use or itself use, for any trading purpose, in the United Kingdom or the United States any of the names "ECC Quarries", "ECC Building Products", "ECC Construction Materials", "ECC Concrete Products" or "ECC Lime Distributors" or any colourable imitation of any of the foregoing.

CONFIDENTIALITY

10.1 For the benefit of each entity in the Other Group, each party itself agrees and agrees on behalf of each entity in its own Group:

- (a) that entities in the Other Group may use for their own purposes trade secrets and other information of any kind which they hold from time to time and which is confidential to the party's own Group; but

- (b) no entity in the party's own Group will disclose to any other person trade secrets or other confidential information belonging or relating to the Other Group unless:
- (i) the disclosure is made to an officer, employee or professional adviser of an entity in the party's own Group who:
 - (A) reasonably requires the information for the proper performance of his duties; and
 - (B) agrees in writing not to disclose such trade secret or other confidential information except as permitted by this clause; or
 - (ii) the disclosure is required by law or by any court of competent jurisdiction or by any regulatory body to whose jurisdiction the person disclosing the trade secret or other confidential information is subject; or
 - (iii) the disclosure is made to any tax authority in connection with the ECC Group's tax affairs or the CAMAS Group's tax affairs; or
 - (iv) the trade secret or confidential information also belongs to or relates to the party making the disclosure; or
 - (v) the disclosure is of information which has at that time entered the public domain otherwise than through the fault of an entity in the Group of the party making the disclosure.

Each party shall use all reasonable endeavours to ensure that the provisions of this clause are complied with by its officers and employees and those of its subsidiaries and upon written request shall supply to the other party a copy of any document entered into pursuant to clause 10.1(b)(i)(B).

PREPARATION OF ACCOUNTS

11. CAMAS shall prepare accounts as at 31 May 1994 (or as at such other date that Completion may take place) for each of its subsidiaries in a format that is consistent with the accounts prepared for subsidiaries of English China Clays plc at its year-end. For the avoidance of doubt this means that a standard year-end accounts consolidation pack (*accounts pack*) shall be completed for each subsidiary save for certain tax information that has been agreed by the parties need not be presented. The accounts packs should be completed as soon as possible after 31 May 1994 but in any event not later than 15 August 1994 (or 74 days after Completion if later than 31 May 1994) and forwarded to ECC. ECC shall be entitled to obtain further information in relation to the 31 May 1994 accounts packs as is deemed to be necessary. The accounts packs will be reviewed or audited by KPMG Peat Marwick (*KPMG*) as they determine is necessary to enable KPMG to give the required comfort or opinions on the

consolidated accounts for English China Clays plc in 1994 as may arise. Accordingly CAMAS shall provide KPMG with the information and reasonable assistance necessary to enable KPMG to complete their work.

DEALINGS BETWEEN GROUPS

12.1 The parties intend that the affairs of the ECC Group and those of the CAMAS Group will be managed independently of each other after the Demerger and that any business transacted after the Demerger between an entity in the ECC Group and an entity in the CAMAS Group will be transacted on an arms' length basis.

12.2 Without prejudice to the provisions of clause 10.1, each party (**the Providing Party**) shall give to the other (**the Requesting Party**) reasonable access to and the right to copy records and books belonging to the Providing Party or any of its subsidiaries and the right to question employees of the Providing Party:

- (a) to the extent reasonably necessary to deal with any aspect of the tax affairs of the ECC Group or the CAMAS Group; or
- (b) for the purpose of complying with statutory obligations or an order of any court of competent jurisdiction;
- (c) to the extent that the Requesting Party has a reasonable requirement for such access or questioning and the Providing Party gives its consent to such access or questioning, such consent not to unreasonably withheld or delayed.

12.3 The Requesting Party shall pay to the Providing Party such reasonable charges as the Providing Party may specify for the time spent by employees of the Providing Party or any of its subsidiaries (and any out of pocket expenses incurred by the Providing Party or any of its subsidiaries) in relation to the exercise of the rights specified in clause 12.2.

12.4 ECCI and ECC CM have entered into an agreement dated 6 May 1994 which is conditional upon Demerger and under which ECCI has agreed to provide computer communications services to ECC CM until 31 December 1994.

PENSIONS AND SHARE SUBSCRIPTION AGREEMENT

13.1 Forthwith on the execution of this Agreement, ECC and CAMAS shall execute the Pension Transfer Agreement and CAMAS shall execute the Share Subscription Agreement.

13.2 ECC shall use reasonable endeavours to procure the execution of the Pension Transfer Agreement by the trustees of the ECC pension schemes, and

the execution of the Share Subscription Agreement by ECC Employee Trust Limited, as soon as reasonably practicable following the execution of this Agreement.

13.3 ECC and CAMAS shall execute the Pension Administration Agreement prior to the establishment of CAMAS's Scheme as defined in schedule 4.

13.4 In this clause 13:

- (a) *Pension Administration Agreement* means the agreement substantially in the form set out in schedule 3;
- (b) *Pension Transfer Agreement* means the agreement in the form set out in schedule 4;
- (c) *Share Subscription Agreement* means the agreement in the form set out in schedule 5 relating to the subscription for CAMAS Shares.

COSTS

14. ECC shall be responsible for the costs described in schedule 6. Any other costs of or incidental to the Demerger will be borne by the party incurring the same.

TAX

15. The provisions of schedule 7 shall have effect.

LITIGATION

16. The provisions of schedule 8 shall have effect.

INSURANCE

17. ECC and CAMAS shall each promptly account to the other in respect of all premium rebates, additional premiums and any other payments (including any deductibles) which may become due and payable by or to either ECC or CAMAS in respect of the insurance policies listed in, and in accordance with the provisions of, schedule 9.

NOTICES

Form of Notice

18.1. Any communication or document, including process in any legal action or proceedings (a *Communication*) which either party may desire to give or deliver in connection with this Agreement shall be:

- (a) in writing;

- (b) delivered by hand or sent by prepaid first class post (in the case of communications within the same country) or by airmail post (in the case of communications being sent from one country to another) or by fax to the addressee at its address or fax number set out in sub-clause 18.3; and
- (c) marked in the manner described in sub-clause 18.3.

Time of Service

18.2. A Communication shall be deemed to have been given, if delivered by hand, at the time of delivery, if sent by post, on the second business day after the envelope or package containing the same shall have been put into the post or, if sent by fax, on the business day following the day on which the same shall have been transmitted (provided that a copy of the Communication is delivered by another means permitted by this clause as soon as is practicable).

In this clause, *business day* means a day, other than a Saturday or Sunday, on which banks are generally open for business (a) in the case of delivery by hand or transmission by facsimile, in the country of the recipient, and (b) in the case of postal delivery, also in the country where the envelope containing the notice was posted.

Addresses

18.3. The current addresses and fax numbers of, and exterior markings required by, the parties for the purposes of Communications are as follows:

ECC

Address:	As above
Fax number:	0734 309501
Requisite Marking:	"Urgent - For the attention of the Company Secretary"

CAMAS

Address:	As above
Fax number:	0242 229060
Requisite Marking:	"Urgent - For the attention of the Company Secretary"

The parties may change their address, fax number or the requisite marking for the purpose of receipt of communication by serving notice on the other party in accordance with this clause.

Proof of service

18.4. In proving service of a Communication, it shall be sufficient to prove that the envelope containing the Communication was properly addressed and delivered either to the address shown thereon or into the custody of the postal authorities as a prepaid first class or airmail letter, or that facsimile transmission of the Communication was made after obtaining in person or by telephone appropriate evidence of the capacity of the addressee to receive the same, as the case may be.

MISCELLANEOUS

Further assurance

19.1. The parties shall, and shall use their reasonable endeavours to ensure that any necessary third party shall, execute such documents and do such acts and things as the other party may reasonably require for the purpose of giving to the other party the full benefit of all the provisions of this Agreement and the other arrangements in connection with the Demerger which are described in the Listing Particulars.

No assignment

19.2. Neither of the parties may assign any of its rights or obligations under this Agreement in whole or in part without the prior written approval of the other.

No waiver

19.3. No waiver by a party of a failure or failures by the other party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a like or different character.

Amendment

19.4. Except where specifically provided, this Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the parties.

No partnership or agency

19.5. Nothing in this Agreement (or in any of the arrangements contemplated hereby) shall be deemed to constitute a partnership between the parties or any of them, nor constitute any party the agent of any other party for any purpose.

Severance

19.6. If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. Notwithstanding the foregoing,

the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision found to be invalid, illegal or unenforceable.

TERMINATION

20. This Agreement may not be terminated or rescinded without the agreement of both parties.

GOVERNING LAW

21. This Agreement shall be governed by and construed in accordance with English law.

AS WITNESS this Agreement has been signed by the duly authorised representatives of the parties the day and year first before written.

SCHEDULE 1 — INTERPRETATION

1.1 Save where the context otherwise requires, in this Agreement the following words and expressions shall have the following meanings:

Admission to Listing means Admission of the CAMAS Demerger Shares and the Subscribers' Shares to the Official List of The London Stock Exchange having become effective by the dissemination of the appropriate notice under Rule 520 of the Rules of The London Stock Exchange;

Agreed Shares means the contributions to be made by ECC and CAMAS in paying or otherwise discharging the Environmental Liabilities pursuant to clause 8.4.2 which shall be 50% and 50% respectively;

agreed terms means, in relation to any document, such document in the terms agreed between the parties;

CAMAS Assignee means Marchmont Holdings Limited or, if different, the entity in the CAMAS Group named against the relevant ECC Contract listed in schedule 2;

CAMAS Company means each of Marchmont Holdings Limited, its subsidiaries on the date hereof, and CAMAS;

CAMAS Demerger Shares means the CAMAS Shares to be allotted and issued, credited as fully paid up, to Qualifying ECC Shareholders in accordance with this Agreement;

CAMAS Group means all of the CAMAS Companies;

CAMAS Guarantee means any contract, guarantee, indemnity, bond, security or collateral obligation referred to in clause 7.3 which is notified to ECC within two years from Completion;

CAMAS Shares means ordinary shares of 5p each in the capital of CAMAS;

CAMAS Shareholders means A.L. Shearer and C.S. Bailey, being the persons who will be holders of the Subscribers' Shares at the Record Time;

Completion means the time and date when the Conditions shall have been fulfilled and the events specified in clause 4 shall have taken place;

Conditions means the conditions set out in clause 2.1;

Demerger means the demerger of Marchmont Holdings Limited pursuant to this Agreement and Admission to Listing;

Demerger Dividend means the dividend referred to in the Demerger Resolution;

Demerger Resolution means the resolution set out in the notice of extraordinary general meeting of ECC included in the circular, in the agreed terms and to be dated today, to (among others) holders of ordinary shares of 25p each in the capital of ECC;

ECC Assignor means each ECC Company having any benefit, right, privilege or obligation under or in respect of an ECC Contract;

ECC Bank Guarantee means the guarantee dated 28 April 1994 granted by ECC with respect to the obligations of Marchmont Holdings Limited under the Finance Documents (as defined in the Facility Agreement);

ECC Company means each of ECC and its subsidiaries on the date hereof, other than a CAMAS Company;

ECC Contracts means:

- (a) the contracts or arrangements listed in parts 1 and 3 of schedule 2 and the ECC Guarantees;
- (b) any contracts or arrangements listed in part 2 of Schedule 2 and any other contract, guarantee, indemnity, bond, security or collateral obligation referred to in clause 7.2 which is notified to CAMAS within two years from Completion;
- (c) all other contracts or arrangements to which any ECC Company is party, in so far as they relate to a CAMAS Company or the business or assets of a CAMAS Company;

ECC CM means ECC Construction Materials Limited;

ECC Group means all of the ECC Companies;

ECCI means ECC International Limited;

Environmental Liabilities means:

- (a) any and all damages (including consequential damages and damages for lost profits), monetary awards or moneys reasonably paid in settlement of claims therefor (but not including fines and penalties whether imposed by law or otherwise) for which either ECC or CAMAS are, or may become liable, arising out of:
 - (i) any Pollution of, or arising from, the Restored Properties and/or
 - (ii) any explosion or fire occurring on or emanating from, the Restored Properties as a result of or in connection with Pollution

in respect of:

- (1) Personal Injury and/or
- (2) Property Damage

and

- (b) any and all costs and expenses incurred or to be incurred by either ECC or CAMAS in respect of the clean-up, remediation or abatement of any Pollution on, or arising from, the Restored Properties:

- (i) for which either ECC or CAMAS are, or may become, legally liable as a result of any direction or order of any Court or other competent authority and/or
 - (ii) which are reasonably undertaken by either ECC or CAMAS, or at the expense of either, for the purpose of avoiding, limiting or mitigating Environmental Liabilities of the type described in (a) above

and

- (c) any and all liabilities which have been or may be incurred by ECC as a result of any claim made under clause 10 of the Haul-Waste Agreement to the extent that they relate to the Restored Properties

and

- (d) any and all costs and expenses reasonably incurred by either ECC or CAMAS in investigating or defending any claims or investigating or monitoring any circumstances which may give rise to Environmental Liabilities of the types described at (a)-(c) above, including all legal, technical consultants' and other experts fees and expenses

OTHER THAN such Environmental Liabilities as described at (a)-(c) above which are incurred as a result of any wilful or reckless error, act or omission on the part of CAMAS or of its officers and employees in its management or operation of the Restored Properties (including any aftercare or restoration operations at the Restored Properties whether under the terms of a site licence or otherwise) or as a result of the breach on its part of the terms of any authorisation, licence or permit or of any law or regulation governing such management or operation;

Facility Agreement means the facility agreement dated 28 April 1994 made between Marchmont Holdings Limited, certain subsidiaries of Marchmont

Holdings Limited, NatWest Capital Markets Limited, certain banks and National Westminster Bank Plc;

Group means a group undertaking (as defined in section 259 Companies Act 1985) of the entity concerned immediately after Completion;

Haul-Waste Agreement means the agreement dated 31 December 1992 between ECC, ECC Overseas Investments Limited, Peninsula Waste Technology Limited and South West Water plc relating to the sale of Haul-Waste Limited;

holding company, subsidiary and wholly-owned subsidiary shall be construed in accordance with section 736 of the Companies Act 1985;

Introduction Agreement means the agreement of even date herewith between J. Henry Schroder Wagg & Co. Limited, CAMAS, ECC and the directors of CAMAS under which, inter alia, CAMAS and ECC have entered into a joint and several indemnity;

Listing Particulars means the listing particulars in the agreed terms to be dated today relating to CAMAS;

Marchmont Holdings Shares means the 571,783,545 issued ordinary shares of 25p each in the capital of Marchmont Holdings Limited;

New Swap Guarantees means the guarantees dated 4 May 1994 between ECC and The National Westminster Bank plc, Union Bank of Switzerland, The Royal Bank of Scotland Plc and The Sanwa Bank Limited respectively in respect of the derivative transactions referred to therein;

Other Group means the ECC Group when the subject is an entity in the CAMAS Group, and the CAMAS Group when the subject is an entity in the ECC Group;

Overdraft Guarantees means the guarantee dated 29 April 1994 between ECC and The National Westminster Bank plc in respect of the banking facilities referred to therein and the guarantee dated 3 May 1994 between ECC and The Royal Bank of Scotland Plc in respect of the short term uncommitted advance facility referred to therein;

person includes individuals, bodies corporate (wherever incorporated), unincorporated associations, partnerships and other unincorporated bodies (in each case, wherever resident and for whatever purpose);

Personal Injury means bodily injury, sickness disease, disability, any other bodily or mental condition compensatable at law, and death resulting therefrom, sustained or suffered by any person other than an employee of either ECC or

CAMAS whose personal injury arises from his employment at the Restored Properties;

Property Damage means injury to, destruction of or the loss or impairment of the use, of any tangible property, including land, or the loss or impairment of the amenity, or any legal rights enjoyed, in such property;

Pollution means:

- (a) the deposition, emission, discharge, release, seepage or escape of smoke, vapours, fumes, acids, alkalis, chemicals, toxic carcinogenic or combustible substances, liquids, gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, including ground water

or

- (b) the generation, emission or discharge or odour, noise vibration, energy or any other sensory phenomenon;

Qualifying ECC Shareholders means holders of ordinary shares of 25p each in the capital of ECC on the register of members of ECC at the Record Time;

Record Time means the close of business on 27 May 1994;

Restored Properties means Sites 1 and 2, Warmwell Quarry, Warmwell, Dorset (Warmwell); and Higher Kiln, Bampton, Devon (Bampton), shown for identification purposes only edged in red on the plans 1 and 2 initialled on behalf of ECC and CAMAS;

Retention Limit means the amount of £1,500,000 (one million five hundred thousand pounds);

Sanwa Bank Guarantee means the guarantee from ECC referred to in clause 8 of the Sanwa Bank Novation Agreement;

Sanwa Bank Novation Agreement means the agreement dated 4 May 1994 between ECC, The Sanwa Bank Limited and Marchmont Holdings Limited relating to the novation of the swap transactions referred to therein;

Subscribers' Shares means the 2 CAMAS Shares taken by the subscribers to the memorandum of association of CAMAS and now registered in the names of the Existing Shareholders;

Taxes Act means the Income and Corporation Taxes Act 1988;

The London Stock Exchange means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

third parties means, in relation to any of the ECC Contracts listed in part 1 of schedule 2, any party to that contract (other than any CAMAS Company or ECC Company) whose consent is required for the novation referred to in clause 7.1.

1.2. Except where the context otherwise requires, references to clauses, paragraphs and schedules are to clauses and paragraphs of, and schedules to, this Agreement.

1.3. Headings to clauses and schedules are for convenience only and do not affect the interpretation of this Agreement.

1.4. References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted prior to the date of this Agreement.

SCHEDULE 2 — CONTRACTS

Part 1: Contracts to be novated

1. Austin Rover Finance Limited, Austin Rover Leasing Limited, Austin Rover Credit Limited, Austin Rover Acceptance Limited and ECC dated 19th June 1987.
2. Autolease Limited and ECC dated 1st February 1991.

Part 2: Guarantees, etc where ECC Group's release is to be sought

ECC Construction Materials Limited

1. ECC Construction Materials Limited/Haul-Waste Limited - 5th February 1993.
2. Royal Bank of Scotland (and various subsidiaries) - 11th July 1990.
3. ECC Construction Materials Limited/Concord Leasing UK Limited - 25th April 1991.
4. ECC Construction Materials Limited, Euro-Titan Cement Company LLC, Titan Cement Co. S.A. and Titan Cement UK Limited - 24th December 1991. Re: Agreement for the sale and purchase of shares in Titan Cement (UK) Limited including the Supply Agreements as defined therein.

Associated Asphalt Company Limited

1. Associated Asphalt Company Limited/Lombard North Central Plc - January 1991.
2. Associated Asphalt Company Limited/Department of Transport - 26th March 1981.

ECC Construction Materials America, Inc.

ECC CMA/CIGNA Worldwide Incorporated - 25th January 1990.

London Roadstone Limited

London Roadstone Limited/National Westminster Bank plc - 9th October 1987.

Société Matériaux Moules de l'Ouest

Société Matériaux Moules de l'Ouest and Société Générale - September 1993

Part 3: Guarantees, etc where no release is to be sought

ECC Construction Materials Limited

ECC Construction Materials Limited/Mr Thornhill (Lease of Little Paxton) - August 1992.

Associated Asphalt Company Limited

1. Associated Asphalt Company Limited/Strathclyde Regional Council (Undated).
2. Associated Asphalt Company Limited/Peterborough City Council - 1991.
3. Associated Asphalt Company Limited/Gallaghers Cheltenham Limited - 1993.
4. Associated Asphalt Company Limited/Key Properties Limited - 1st May 1988.
5. Associated Asphalt Company Limited/Peterborough City Council - 1992.
6. Associated Asphalt Company Limited/Heathrow Airport Limited - 18th February 1991.
7. Associated Asphalt Company Limited/Thames Water Utilities Limited - 4th June 1992.
8. Associated Asphalt Company Limited and London Borough of Barnet - 1991 (Undated).
9. Associated Asphalt Company Limited and London Borough of Barnet - 1986 (Undated).

ECC Building Products Limited

ECC Building Products Limited/London Borough of Barnet - March 1992.

SCHEDULE 3 - PENSION ADMINISTRATION AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 1994

BETWEEN

_____ of Regent House, Rodney Road, Cheltenham, Gloucestershire, GL50 1HX (the *Trustees*)

CAMAS PLC of Regent House, Rodney Road, Cheltenham, Gloucestershire, GL50 1HX (the *Company*)

ENGLISH CHINA CLAYS PLC of 1015 Arlington Business Park, Theale, Reading, RG7 4SA (trading in the name of "ECC Pensions" and hereafter referred to as *ECC Pensions*)

WHEREAS :

- (A) by the Trust Deed and Rules dated _____ the Company with the approval of the Trustees established the Pension Scheme (the *Scheme*)
- (B) under Clause _____ of the said Trust Deed the Trustees have power to delegate any of their powers and discretions to any person or any body

IT IS HEREBY AGREED that :

APPOINTMENT

1. The Trustees and the Company hereby appoint ECC Pensions to administer the Scheme in accordance with the provisions of this Agreement with effect from _____ (*Effective Date*) and ECC Pensions hereby consents to be so appointed.

MANAGEMENT OF THE SCHEME

2. In consideration of the payment by the Trustees of the fees described in Paragraph 4 below, ECC Pensions hereby undertakes to administer the Scheme for the Trustees and in pursuance of this undertaking to provide the ongoing Administration Services (the *Services*) set out in Schedule 1 to this Agreement.

STANDARDS OF PERFORMANCE

3. In providing the Services ECC Pensions will use all reasonable endeavours to process data relative to new entrants and exits following receipt of information in the form specified in the Pensions Administration Manual - Employers Guide and to notify beneficiaries and/or the Company or the Trustees as appropriate within the target turnaround times specified in Schedule 2 to this Agreement.

FEES

4. The Trustees agree to pay ECC Pensions quarterly in advance with effect from the date specified in Paragraph 1 the fees calculated in accordance with the provisions of Schedule 3 to this Agreement together with Value Added Tax (if applicable).

EXPENSES

5. In addition to the fees payable under Paragraph 4 above the Trustees shall within 30 days of receiving written request pay to ECC Pensions the amount of any reasonable out-of-pocket costs and expenses (and any VAT payable thereon) incurred by ECC Pensions in connection with the Scheme or otherwise in respect of the Services or any Additional Services. Out-of-pocket expenses exceeding £500 per month will only be incurred with the prior agreement of the Trustees.

ADDITIONAL WORK

6. ECC Pensions may, at the Trustees' or Company's request, agree to undertake any additional work related to the Services (*Additional Services*). The specification of, and fee for, such Additional Services will be agreed between the Trustees and ECC Pensions in advance and the Trustees agree to pay ECC Pensions the amount so agreed in accordance with the provisions of Paragraph 5.

IMPLEMENTATION

7. The Trustees agree to pay to ECC Pensions in relation to the Implementation Work referred to in Section B of Schedule 4 of this Agreement:

- (i) on signing of this Agreement 25% of the Implementation Fee together with Value Added Tax;
- (ii) the balance of the Implementation Fee together with Value Added Tax, not later than one month after the date of this Agreement.

DEEDS AND RULES

- 8.(a) The Trustees will forthwith on the execution of this Agreement provide ECC Pensions with certified copies of all formal documents (including Trust Deeds and Rules) of the Scheme.
- (b) The Trustees will give ECC Pensions written notice of any intended alteration or amendment to the formal documents regulating the Scheme as soon as they have been agreed by the Trustees and the Company and will within seven days of the execution of any instrument effecting an

alteration or amendment send ECC Pensions a certified copy of the instrument.

INFORMATION

9. The Trustees and the Company undertake to provide ECC Pensions promptly with all information it may reasonably require to enable it to administer the Scheme and provide the Services or any Additional Services.

SECURITY OF DATA

- 10.(a) ECC Pensions undertakes to use its best endeavours to ensure the safekeeping of data relating to the Scheme and its members.
- (b) The Trustees and the Company will use their best endeavours to ensure that duplicates will be kept of any records supplied to ECC Pensions whether in human or computer readable form.

FORMAT OF COMPUTER PRODUCED INFORMATION

- 11.(a) All printed microfiche or other computer output will be in the format agreed from time to time between the Trustees, the Company and ECC Pensions.
- (b) All benefit statements and quotations will be attributed to the respective Trustees and ECC Pensions will have no obligation or liability in respect of the provision of any of the benefits so stated or quoted.

LIMITATION OF LIABILITY

- 12.(a) The parties have agreed that, unless the Trustees shall deliver to ECC Pensions a Request Notice pursuant to the provisions hereof, ECC Pensions will not maintain professional indemnity insurance cover in respect of any of the Implementation work, the Services, or Additional Services, to be carried out or provided by ECC Pensions hereunder (*Insurance*);
- (b) A notice may, however, be served in writing on ECC Pensions at any time by the Trustees (*Request Notice*) requiring ECC Pensions to seek Insurance, and thereupon ECC Pensions will use reasonable endeavours to obtain a quote or quotes for such Insurance in the insurance market, and ECC Pensions will provide the Trustees with copies of such quote or quotes obtained, and will thereupon discuss and agree with the Trustees, on the basis of the quotes, the appropriate terms to be selected for such Insurance, including limits applicable thereto, and consequential premium cost. The Trustees shall confirm their agreement to the Insurance selected, in writing, and thereupon ECC Pensions will take out and

maintain such Insurance subject only to the Trustees paying to ECC Pensions the premium amount for such Insurance when the relative premium becomes due and payable by ECC Pensions (*Premium Payment*). On subsequent renewals of such Insurance, ECC Pensions and the Trustees will, similarly, agree the terms of such Insurance, which will then be maintained subject only to Premium Payment. Details of the current policy will be made available by ECC Pensions to the Trustees on request.

- (c) In the event that any of the Implementation work, the Services, or any Additional Services, is or are materially deficient as a result of ECC Pensions (or any of its agents or employees) failing to provide the same in accordance with the provisions hereof or in the event that ECC Pensions otherwise carry out any of the Implementation work or provide any of the Services, or any Additional Services, in a manner giving rise to a liability on the part of ECC Pensions (or any of its agents or employees) to the Trustees or the Company or any other person, the extent of ECC Pensions' liability (or that of the relevant agent or employee) shall be subject to the Contractual Limit.
- (d) The Contractual Limit shall be the following:
 - (i) To the extent that no Insurance is required to be maintained by ECC Pensions, pursuant to a Request Notice and the provisions of sub-clause (b) hereof, ECC Pensions' liability (or that of the relevant agent or employee) shall be limited to re-performance of that part of the Implementation work, the Services, or Additional Services, that is deficient, or in respect of which ECC Pensions (or any of its agents or employees) has a liability, at its own cost up to the amount paid by the Trustees therefor;
 - (ii) If Insurance is maintained pursuant to a Request Notice and the provisions of sub-clause (b) hereof, ECC Pensions' liability (or that of the relevant agent or employee) shall be limited in accordance with the limits, and subject to the terms, of the policy in respect of the Insurance to the amount actually receivable by ECC Pensions under such policy of Insurance in connection with the matter giving rise to the liability.
- (e) ECC Pensions (including its agents and employees) will not be liable for any direct or consequential loss, expense or inconvenience to the Trustees or the Company (or any other person) arising from delay in providing data or in making any payment or from the payment to any person of any wrong amount as a result of incorrect information supplied by the Trustees or the Company.

- (f) ECC Pensions (including its agents and employees) shall not be under any liability whatsoever to the Trustees or the Company or any other person for any failure to provide any of the Services or Additional Services or to carry out any of the Implementation work resulting directly or indirectly from any Act of God, civil disturbance, act or sabotage, regulations of any government, or resulting from any circumstance beyond the control of ECC Pensions.
- (g) The Company and the Trustee jointly and severally agree to indemnify, and to hold indemnified, ECC Pensions (and/or its agents and employees) against any losses of any type whatsoever (including without limitation reasonable legal and other professional expenses) suffered by ECC Pensions (and/or its agents and employees) as a result of any claim brought against ECC Pensions (and/or its agents and employees) by any person (other than the Company and/or the Trustees) in connection with the Implementation work, the Services and/or the Additional Services.

NOTICES

13. Written notifications in connection with this Agreement will be sent, as the case may be, to the Company and the Trustees at Regent House, Rodney Road, Cheltenham, Gloucestershire, GL50 1HX and to ECC Pensions at 1015 Arlington Business Park, Theale, Reading, RG7 4SA.

TERMINATION

- 14.(a) The appointment of ECC Pensions to administer the Scheme is for an initial period of six months commencing on the Effective Date and will continue thereafter subject to the right of the Trustees or ECC Pensions to terminate the appointment on three months and six months' written notice respectively.
- (b) On the termination of this Agreement ECC Pensions shall within 30 days thereafter supply in written form to the Trustees all data and records in the possession of ECC Pensions relating to the Scheme and its members and, subject to the requirements of the Data Protection Act 1984, at any date falling at least twelve months after the termination of the Agreement ECC Pensions may delete from its databases and destroy all data and records relating to the Scheme and its members.

SIGNED FOR AND ON BEHALF OF)
THE COMPANY)

SIGNED FOR AND ON BEHALF OF)
THE TRUSTEES)

SIGNED FOR AND ON BEHALF OF)
ENGLISH CHINA CLAYS PLC)

SCHEDULE 1

Administration Services

Data Maintenance and Calculations

- Maintain all records for the Schemes in respect of active members, pensioners, deferred pensioners and their dependants.
- Calculate benefits due to individual members including, where appropriate, quotation of options and ensuring that benefits are within Inland Revenue limits.
- Pay benefits to members or alternatively liaise with members to determine which option, if any, is preferred.
- Obtain information from former employer(s) in respect of transfer value receivable and quote benefits which can be secured by the transfer value.
- Provide information to new employers (or insurers or other agents acting on behalf of members) of transfer value payable and terms attaching to a transfer value.
- Deal direct with the Department of Social Security including the completion of DSS forms and payment of State Scheme premiums.
- Deal direct with the Inland Revenue in connection with tax on refunded contributions, commutation payments, and any other tax liabilities attaching to the Trustees.
- Administer the Additional Voluntary Contributions (AVCs) provisions of the Schemes (subject to a maximum of two providers i.e. building societies or life assurance companies).
- Monitor contributions payable to the Schemes by the Companies and members and arrange collection.
- Control and monitor cash flow of the Schemes to maximise investment and minimise the need for disinvestment to pay benefits. Where appropriate, arrange temporary deposit pending investment.
- Remit available funds to the investment managers in accordance with the Trustees instructions.
- Supply data to any risk insurers in accordance with the Trustees instructions.

Annual Benefit Statements and other membership reporting

- Prepare one Benefit Statement a year for each active member.
- Prepare AVC Statements for selected active members each year in accordance with the Trustees instructions.
- Draft Members Report and Annual Report in accordance with the Disclosure of Information Regulations each year.

Liaison with other Advisers/Professional Bodies

- Supply data to the Schemes Actuary in connection with any Actuarial Valuations
- Liaise, as necessary, with the Schemes Actuary in relation to transfer value calculations and any other calculations requiring Actuarial input of factors.
- Provide information relating to the Schemes to the Auditors appointed by the Trustees for the purposes of the drafting and audit of the Scheme Accounts.
- Communicate with solicitors regarding deceased member's Estates.

Fund accounting and Book-Keeping Services

- Operate bank accounts on behalf of the Trustees into which will be paid all receipts and through which will be settled all payments from the Schemes.
- Maintain appropriate cash books and carry out monthly bank reconciliations.
- Produce six monthly Unaudited Financial Statements and Management Report for submission to the Trustees. Liaise with the Schemes auditors to enable them to prepare Financial Statements in accordance with the Statement of Recommended Practice Number 1 (SORP1).
- Provide full investment monitoring service, which will include:-
 - recording of all contract notes;
 - maintenance of investment registers;
 - reconciliation of fund manager's reports;
 - dividend tracking; and
 - ensuring that all tax on dividends is reclaimed.

- Complete any statutory documents required.

Pensioner Payroll Services

- Pay pension benefits monthly by bank transfer or cheque, subject to PAYE deduction and calculate and pay pension increases as they become due, advising individual members affected.
- Remit PAYE deductions to the Inland Revenue
- Produce annual analysis of payments and deductions (P14, P35, P60 etc.)

SCHEDULE 2

ECC Pensions require accurate data to process quotations, calculations and enquiries. Assuming this is available ECC Pensions will use reasonable endeavours to meet the target turn round times (net of third party action and provided that the turnover (i.e. number of joiners and leavers) is not more than 1.0% of the active membership per annum) detailed below from date of receipt by ECC Pensions of all information required to complete the case:

Turnaround Times in Working Days

		Target
AVC Enquiries		5
Death in Deferment	Calculation	2
	Payment of Benefits	5
Death in Retirement	Calculation	2
	Payment of Benefits	A
Death in Service	Calculation	2
	Payment of Benefits	A
Early Leaver	Calculation	5
	Payment of Benefits	5
Retirement	Calculation	2
	Payment of Benefits	B
Transfers In	Calculation	5
Transfers Out	Calculation	5
	Payment	5
Payment of Pensions		C
Issue of Benefit Statements		D

- A. The target will be to pay these benefits as soon as possible after the date of death - liaison with the Company regarding the delivery of these benefits would be normal.
- B. The target will be to pay these benefits on the first day of the member's retirement.
- C. The target will be to pay pensions on the day that they are due.
- D. The target will be to issue annual Benefits Statements within 10 days of receipt of year end data from the paycentre (but if more than one tape is received within the 10 day period then each additional paycentre's data will be processed within successive 10 day periods).

SCHEDULE 3

Details of Fee Estimate

The total monthly charges for the provision of the Services are calculated as shown below:-

Data Maintenance and Calculations £ per quarter

- Monthly Pensions Administration @ £1.00 per member 19,890
- Annual Benefit Statement production for active members @ £0.20 per statement per month 1,590

Fund Accounting and Book-keeping Services

- Book-keeping records @ £0.05 per member 990
- Six month Management Report/Unaudited Accounts 300
- Investment Accounting 1,650

Pensioner Payroll Services

- Payment/Administration charge @ £0.20 per pensioner/dependant 900
25,320

The above fees for ongoing administration charges are based on the information given in conjunction with the following notes:-

Notes

1. The charges have been based on the following membership figures:-

- Actives 2,650
- Deferred Pensioners 2,453
- Pensioners/Dependants 1,530

Actual charges will be assessed on the actual membership figures at the beginning of each quarter.

2. The above charges assume that the turnover (i.e. number of joiners and of leavers) is not more than 1.0% of the active membership per annum.
3. Charges for turnover in excess of 1.0% of the active membership per annum are on a fixed rate basis of £25 per joiner/leaver calculation.

4. Calculation of one transfer value for each Deferred Member (including the related correspondence with the potential recipient) is included. Each subsequent calculation and related correspondence will incur the additional charge outlined in 3 above and this can either be deducted from the transfer value or paid by the Trustee.
5. Fees are exclusive of V.A.T.
6. Implementation of changes to scheme rules will be charged on a time-cost basis. A budget will be provided prior to commencing work on this.
7. ECC Pensions reserve the right to make additional charges in respect of system changes.
8. The benefit statement costs allow for the use of our standard format. If the Trustees wish to use a different format, additional costs may be incurred.
9. The cost of all stationery used by ECC Pensions in providing the Services will be paid by the Trustees or the Company.
10. The above charges approximate to the cost of providing the Services and this basis of charging will be applied for the first six months of this Agreement. Thereafter charges will be the subject of re-negotiation between ECC Pensions and the Trustees and the parties will agree revised charges which approximate to the cost of providing the service, plus 20%. In the absence of agreement by the due date, provisionally the 20% mark-up will be applied thereafter to the charges set out herein, subject to subsequent adjustment when the revised charges are agreed.
11. ECC Pensions reserves the right, at any time after the initial six months of this Agreement, on thirty days notice, to vary the rate of charges, to take account of increases which ECC Pensions incurs in the cost of providing the Services. If any such variation is unacceptable to the Trustees, they may give short notice of thirty days to terminate this Agreement at any time within six months of the said notice of variation.

SCHEDULE 4

Implementation

The following implementation work will be undertaken;

System Amendments

- Amend computer software to create separate data base for Camas' Pension Scheme members and insure accurate transfer of data thereto.
- Divide current pensioners payroll between ECC and Camas members.

Administrative Arrangements

- Open required bank accounts in the names of the Camas Pension Schemes and obtain cheque books, arrange authorised signatories etc.
- Draft Members Explanatory Booklet, Application and Nomination forms in a format agreed with the Trustees and a Pensions Administration Manual - Employers Guide.
- Arrange for transfer of Camas members AVC accounts from English China Clays Pension Fund Trustees Limited to the new Camas Pension Scheme Trustees.

Investment Accounting

- Arrange for investment manager to divide ECC Portfolio into two separate portfolios representing the proportionate split between ECC and Camas Pension Scheme in accordance with the Pension Transfer Agreement.
- Create necessary records and controls to facilitate the monitoring and reconciliation of Investment Managers employed by the Camas Pension Scheme.

Registration

- Ensure appropriate registration in accordance with the Data Protection Act;
- Register Camas Pension Schemes with the Pension Schemes Registry.

Implementation Fee

The Implementation Fee for the work referred to in B above will be an amount equal to the cost incurred by ECC Pensions Limited in making the computer software amendments required plus £5,000, plus Value Added Tax.

*This amount is an estimate and will be varied when we receive a quotation in respect of the computer software amendments required.

SCHEDULE 4 - PENSION TRANSFER AGREEMENT

_____ 1994

ENGLISH CHINA CLAYS PLC

CAMAS PLC

**ENGLISH CHINA CLAYS PENSION FUND
TRUSTEES LIMITED**

**ENGLISH CHINA CLAYS EXECUTIVE
PENSION FUND TRUSTEES LIMITED**

PENSION TRANSFER AGREEMENT

A PENSION TRANSFER AGREEMENT made on _____ 1994

BETWEEN

ENGLISH CHINA CLAYS PLC a company incorporated in England with registered number 154236 and having its registered office at 1015 Arlington Business Park, Theale, Reading, RG7 4SA (*ECC*);

CAMAS PLC a company incorporated in England with registered number 2902409 and having its registered office at Regent House, Rodney Road, Cheltenham, Gloucestershire GL50 1HX (*CAMAS*); and

ENGLISH CHINA CLAYS PENSION FUND TRUSTEES LIMITED and **ENGLISH CHINA CLAYS EXECUTIVE PENSION FUND TRUSTEES LIMITED** incorporated in England with registered numbers 1588199 and 1588581 and having their registered offices at 1015 Arlington Business Park, Theale, Reading, RG7 4SA (the *Trustees*)

SUPPLEMENTAL to a demerger agreement (the *Demerger Agreement*) dated [12 May 1994] between ECC and CAMAS.

DEFINITIONS

1.1 This Agreement shall apply separately in relation to each Pension Scheme and in relation to each Pension Scheme shall operate to bind ECC, CAMAS and such of the Trustees as are trustees of that Pension Scheme only.

1.2 Words and expressions defined in the Demerger Agreement have (unless the context otherwise requires) the same meanings in this Agreement.

1.3 In this Agreement the following expressions shall, unless the context otherwise requires, have the following meanings:

Actuarial Assumptions means the actuarial and other assumptions specified in the Actuary's Letter;

Actuary's Letter means the letter dated [12 May 1994] from ECC's Actuary to CAMAS's Actuary setting out the Actuarial Assumptions;

AVC Fund means benefits under the Pension Scheme in respect of the Transferring Members which are attributable to (or treated under the Pension Scheme as attributable to) voluntary contributions made by the Transferring Members to the Pension Scheme;

CAMAS's Actuary means Mark Duke of Towers Perrin Forster & Crosby, 77-91 New Oxford Street, London, WC1A 1PX or such other actuary as may be nominated by notice from CAMAS to ECC;

CAMAS's Pension Liabilities means, subject to clause 9 of this Agreement (Additional Voluntary Contributions and Insurance Policies), the actuarial value at Pension Transfer Date (calculated in accordance with the Actuarial Assumptions) of the benefits currently prospectively and contingently payable under the Pension Scheme to or in respect of the Transferring Members and their dependants (excluding any benefits currently attributable to the AVC Fund or secured under the Insurance Policies) by reference to pensionable service before the Pension Transfer Date but making proper allowance (on the basis of the Actuarial Assumptions) for projected increases in the rate of pensionable salary of each Transferring Member from the Pension Transfer Date to normal retirement date under the Pension Scheme or an earlier date of assumed leaving, and so that the amount of any liabilities or benefits arising under or by virtue of article 119 of the Treaty of Rome or by virtue of any change in legislation or revenue practice after the date of this Agreement shall in either case be ignored and excluded for these purposes;

CAMAS's Scheme means the relevant retirement benefits scheme established by CAMAS or another CAMAS Company in accordance with clause 5 of this Agreement;

Deferred Member means an individual, on the Pension Transfer Date:

- (a) whose pensionable service under the Pension Scheme has ended;
- (b) who has a right to a deferred pension under the Pension Scheme; and
- (c) whose pension under the Pension Scheme has not started to be paid.

ECC's Actuary means Michael Housden of Towers Perrin Forster & Crosby, Lambourn Square, 2500 First Avenue, Newbury Business Park, Newbury RG13 2PZ or such other actuary as may be nominated by notice from ECC to CAMAS;

Insurance Policies means policies of insurance held as part of the assets of a Pension Scheme which have been effected with one or more insurance companies by the Trustees, or assigned to such Trustees, and which secure benefits payable under the Pension Scheme in respect of certain specified members thereof;

Interim Period means the period commencing on the day immediately following Admission to Listing and ending on the day immediately preceding the Pension Transfer Date (both days inclusive);

New Employee means any employee of a CAMAS Company who during the Interim Period applies for membership of the Pension Schemes and in respect of whom written notice is given to the Trustees;

Non-Active CAMAS Members means those of the Pensioners and Deferred Members who were in the opinion of the Trustees employed, at the date of ceasing to be in pensionable service under the Pension Scheme, by a CAMAS Company and such other Pensioners and Deferred Members as the Trustees shall, with the agreement of CAMAS's Actuary, specify to ECC's Actuary and any individuals entitled or prospectively entitled to benefits under the Pension Scheme through them **PROVIDED THAT** Non-Active CAMAS Members shall not include any member of the Pension Scheme or their contingent beneficiaries where at the Pension Transfer Date the Trustees intend to deal with that member's entitlement under the Pension Scheme in such a way that, other than as the result of a transfer to CAMAS's Scheme, the Pension Scheme will no longer have any liability in respect of that member;

Payment Date means the earliest practicable date falling on or after the Pension Transfer Date for the payment of the amount referred to in clause 7.1(b) or clause 7.2 below, as appropriate.

Pension Scheme means each of

- (a) the English China Clays Pension and Life Assurance Scheme, established by a declaration of trust dated 11 May 1946; and
- (b) the English China Clays Executive Retirement Benefits Scheme established by an interim trust deed dated 21 December 1978.

Pension Transfer Date means the date which is six (6) months after the Admission to Listing (or such other date as ECC and CAMAS may agree in writing) or such earlier date as the Inland Revenue may require for the cessation of the participation of the CAMAS Companies in the Pension Scheme;

Pensionable CAMAS Employees means such individuals at Admission to Listing as are then employed members of the Pension Scheme and are employed by a CAMAS Company immediately after Admission to Listing, and any New Employees;

Pensioner means an individual who, on the Pension Transfer Date, is in receipt of a pension under the Pension Scheme;

Share of Fund means an amount equal to:

$$\frac{A}{C} \times B$$

where:

A = the value (being, where appropriate, the middle-market value) as at the Pension Transfer Date of the assets of the Pension Scheme (excluding the assets attributable to the AVC Fund and the Insurance Policies);

B = CAMAS's Pension Liabilities; and

C = the Total Pension Liabilities;

Taxes Act means the Income and Corporation Taxes Act 1988;

Timing Adjustment means, for any period, the result of the calculation:

$$0.8 \times (I_1 \text{ (TA) divided by } I_1 \text{ (TB)})$$

PLUS:

$$0.2 \times (I_2 \text{ (TA) divided by } I_2 \text{ (TB)})$$

where:

I_1 = the FT-SE-Actuaries All Share Total Return Index (Datastream mnemonic FTALLSH (RI))

I_2 = the FT-Actuaries British Government All Stocks Total Return Index (Datastream mnemonic FTAGOV (RI))

$I(\text{TA})$ = the value of the defined index calculated as at the close of business on the last working day of the relevant period

$I(\text{TB})$ = the value of the defined index calculated as at the close of business on the working day immediately preceding the first day of the relevant period;

Total Pension Liabilities means, subject to clause 9 of this Agreement (Additional Voluntary Contributions and the Insurance Policies), the actuarial value at Pension Transfer Date (calculated in accordance with the Actuarial Assumptions) of the benefits currently prospectively and contingently payable under the Pension Scheme to or in respect of all members and their dependants (excluding any benefits attributable to the AVC Fund or secured under the Insurance Policies) by reference to pensionable service before the Pension Transfer Date but making proper allowance (on the basis of the Actuarial Assumptions) for projected increases in the rate of pensionable salary of each relevant member from the Pension Transfer Date to normal retirement date under the Pension Scheme or an earlier date of assumed leaving, and so that the amount of any liabilities or benefits arising under or by virtue of article 119 of the Treaty of Rome or by virtue of any change in legislation or revenue practice after the date of this Agreement shall in either case be ignored and excluded for these purposes;

Transfer Amount means such amount as shall be certified by ECC's Actuary in accordance with clause 6.1(b) of this Agreement as being (on the basis of the Actuarial Assumptions) equal to the Share of Fund and agreed by CAMAS's Actuary (such agreement not to be unreasonably withheld);

Transfer Conditions means the following conditions:

- (a) that ECC's Actuary supplies the Trustees with an Actuarial Certificate in the form required by paragraph 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, as amended, in respect of the Transferring Members; and
- (b) that the written consent of the Pension Schemes Office of the Inland Revenue and, to the extent required (by statute or otherwise), of the Occupational Pensions Board to the arrangements set out in this Agreement is obtained;

Transferring Members means the Pensionable CAMAS Employees who are in pensionable service under the Pension Scheme on the day immediately preceding the Pension Transfer Date, the Non-Active CAMAS Members.

1.4 In this Agreement, references to the Trustees and the trustees of CAMAS's Scheme shall where the context so admits include all other or additional trustees of the Pension Scheme and CAMAS's Scheme respectively.

1.5 The headings and table of contents used in this Agreement are for ease of reference only and shall not affect its interpretation.

CONDITIONS

2. The obligations of the parties under this Agreement are conditional upon the Demerger Agreement becoming unconditional in accordance with its terms.

INTERIM PERIOD

3.1 During or in respect of the Interim Period, ECC and the Trustees shall:

- (a) subject to the position of the Pension Scheme as approved or capable of approval under Chapter I of Part XIV of the Taxes Act as an exempt approved scheme not being adversely affected thereby, permit the continued participation of the relevant companies in the CAMAS Group as participating employers in the Pension Scheme in respect of the Pensionable CAMAS Employees; and
- (b) use reasonable endeavours to assist the relevant companies in the CAMAS Group to procure that such of the Pensionable CAMAS Employees as are in contracted-out employment (within the meaning of section 8 of the Pension Schemes Act 1993) by reference to the Pension Scheme at the date of Admission to Listing shall continue to be in contracted-out employment by reference to the Pension Scheme and that any New Employees become so contracted-out.

3.2 During and in respect of the Interim Period, CAMAS shall procure that each relevant CAMAS Company will:

- (a) pay monthly within 7 days of the end of each calendar month to the Trustees the contributions due and payable to the Pension Scheme by and in respect of the Pensionable CAMAS Employees at the same rate (as a percentage of pensionable pay) as is paid by ECC Companies participating in the Pension Scheme;
- (b) comply in all other respects with the provisions of the Pension Scheme;
- (c) not exercise any power, right or discretion conferred on it by the Pension Scheme except with the prior approval of ECC on such terms as ECC may specify;
- (d) not do or omit to do anything whereby the position of the Pension Scheme as a scheme which is approved or capable of approval under Chapter I of Part XIV of the Taxes Act as an exempt approved scheme or as a contracted-out scheme (for the purposes of the Pension Schemes Act 1993) would or might be prejudiced; and
- (e) not go into liquidation.

3.3 During the Interim Period, ECC shall use its best endeavours to procure that (save with the consent of CAMAS or as required by law or as is necessary or desirable to avoid prejudicing the position of the Pension Scheme as a scheme which is approved or is capable of approval as an exempt approved scheme under Chapter I of Part XIV of the Taxes Act or as a contracted-out scheme for the purposes of the Pension Schemes Act 1993):

- (a) no action shall be taken to alter the definitive trust deed and rules of the Pension Scheme, or amend the Pension Scheme in such a way as to affect materially and adversely the amount to be received by the trustees of CAMAS's Scheme pursuant to this Agreement;
- (b) no actions shall be taken to amend, change or augment the benefits or prospective benefits under the Pension Scheme payable or contingently payable to or in respect of any member of the Pension Scheme who is not a prospective Transferring Member unless an additional contribution, sufficient to meet the cost of such amendment, change or augmentation, as calculated by ECC's Actuary, is paid to the Pension Scheme by ECC; and
- (c) the Pension Scheme shall not be terminated.

3.4 CAMAS shall procure that each of the relevant companies in the CAMAS Group shall do everything in their power (and co-operate with ECC and the Trustees as requested by them) to ensure that all of their employees

cease to be in pensionable service under the Pension Scheme before or at the end of the Interim Period in accordance with clause 4 below.

TRANSFER OF MEMBERS

4. Subject to the Transfer Conditions and the conditions specified in clause 5 having been duly satisfied (to the reasonable satisfaction of the Trustees), ECC and the Trustees shall exercise their transfer powers under Rule 9(B) of the Pension Scheme (and any other provisions thereof) to transfer all of the Transferring Members to CAMAS's Scheme with effect on and from the Pension Transfer Date on terms complying with clause 8 of this Agreement and CAMAS shall procure that the trustees of CAMAS's Scheme accept such transfer.

CAMAS's SCHEMES

5.1 CAMAS (or another CAMAS Company) shall before, and with effect from a date no later than, the Pension Transfer Date have established retirement benefits schemes which are approved or capable of approval under Chapter I of Part XIV of the Taxes Act as exempt approved schemes and which the Trustees consider are materially identical in all respects to the appropriate Pension Scheme and to which the Trustees of the appropriate Pension Scheme can make a transfer of assets without prejudicing the position of the appropriate Pension Scheme as approved (or capable of approval) as an exempt approved scheme under Chapter I of Part XIV of the Taxes Act.

5.2 CAMAS shall procure that, at least seven days before the time any payment to be made under clauses 7 or 9 of this Agreement falls due for payment:

- (a) evidence has been produced to the reasonable satisfaction of ECC and the Trustees that insofar as any part of the payment would represent amounts in respect of accrued rights to guaranteed minimum pensions (as defined in the Pension Schemes Act 1993), CAMAS's Scheme is a contracted-out scheme (for the purposes of the Pension Schemes Act 1993) and the effect of the making of the payment to CAMAS's Scheme is to discharge the liability of the Pension Scheme to provide guaranteed minimum pensions to and in respect of the Transferring Members;
- (b) evidence has been produced to the reasonable satisfaction of ECC and the Trustees that the making of the transfer payment to CAMAS's Scheme will not prejudice the position of the Pension Scheme as approved (or capable of approval) by the Commissioners of Inland Revenue as an exempt approved scheme under Chapter I of Part XIV of the Taxes Act and either that CAMAS's Scheme is approved under Chapter I of Part XIV of the Taxes Act by the Commissioners of Inland

Revenue or approval for such payment to CAMAS's Scheme has been specifically given to the Pension Scheme in writing by the Commissioners of Inland Revenue;

- (c) the trustees of CAMAS's Scheme have confirmed in writing to the Trustees that, in relation to each Transferring Member, CAMAS's Scheme will, and has notified each Transferring Member that it will, treat that part of any transfer payment which CAMAS's Scheme receives from the Pension Scheme as may be notified by the Trustees as being referable to members' contributions of a Transferring Member in the same way as if the relevant Transferring Member had made a contribution to CAMAS's Scheme of the amount notified;
- (d) the Trustees have received (in form and substance reasonably satisfactory to them) any undertakings from CAMAS, any employer and/or the trustees of CAMAS's Scheme required by the Trustees to comply with statutory, Inland Revenue or Occupational Pensions Board requirements;
- (e) the Trustees have received evidence reasonably satisfactory to them that CAMAS's Scheme will accept transfer payments from the Pension Scheme in respect of the Transferring Members and will grant benefits complying with clause 8 of this Agreement;
- (f) CAMAS has delivered a certificate addressed to ECC and to the Trustees in such terms as ECC may reasonably require confirming that at the Pension Transfer Date the terms of CAMAS's Scheme provide for, or announcements have been made to Transferring Members granting, benefits complying with clause 8 of this Agreement; and
- (g) the Trustees have received copies of the deeds and documents establishing and governing CAMAS's Scheme and are reasonably satisfied that in all material respects it contains identical provisions to those of the Pension Scheme.

DETERMINATION OF TRANSFER AMOUNT

6.1 Following Admission to Listing, ECC shall:

- (a) within eight weeks of Admission to Listing supply to ECC's Actuary and CAMAS's Actuary such information as each may reasonably request for the purpose of calculating an estimate of the Transfer Amount;
- (b) instruct ECC's Actuary to supply an estimate of the Transfer Amount to ECC, CAMAS's Actuary, the Trustees and the trustees of CAMAS's Scheme within four weeks of receipt of the information referred to in (a) above;

- (c) within eight weeks of the Pension Transfer Date supply to ECC's Actuary and CAMAS's Actuary such information as each may reasonably request for the purpose of each calculating the Transfer Amount; and
- (d) instruct ECC's Actuary to supply to ECC, CAMAS's Actuary, the Trustees and the trustees of CAMAS's Scheme a statement of the Transfer Amount within twelve weeks of the Pension Transfer Date.

6.2 Following Admission to Listing, CAMAS shall:

- (a) instruct CAMAS's Actuary to reply to ECC and ECC's Actuary within one week of receipt of ECC's Actuary's estimate of the Transfer Amount stating whether or not in his opinion the estimate is reasonable; and
- (b) instruct CAMAS's Actuary to reply to ECC and ECC's Actuary within two weeks of receipt of ECC's Actuary's calculation of the Transfer Amount, stating whether he agrees with ECC's Actuary's calculations.

6.3 CAMAS undertakes to procure that all such information as ECC's Actuary may reasonably request for the purpose of calculating the Transfer Amount shall be made available to ECC's Actuary.

PAYMENT OF TRANSFER AMOUNT

7.1 Subject to the Transfer Conditions and the conditions set out in clause 5 being fulfilled and CAMAS complying with its obligations under this Agreement, the Trustees shall:

- (a) within two weeks of the Pension Transfer Date or, if later, within one week of the date on which CAMAS's Actuary verifies the transfer estimate under clause 6.2(a), ensure that a payment on account of the Transfer Amount equal to the amount which ECC's Actuary estimates to be equal to the Transfer Amount;
- (b) on or before the Payment Date ensure that a payment of the balance of the Transfer Amount, calculated as:
 - (i) the Transfer Amount multiplied by the Timing Adjustment for the period between the Pension Transfer Date and the date on which final payment or transfer is made; less
 - (ii) the amount paid or transferred under clause 7.1(a) multiplied by the Timing Adjustment between the date of its payment or transfer and the date on which final payment or transfer is made,

is made or transferred to the trustees of CAMAS's Scheme.

7.2 In the event of the payment or transfer on account under clause 7.1(a) being in excess of the Transfer Amount, CAMAS shall procure that such excess multiplied by the Timing Adjustment from the day immediately following the date of the payment or transfer under clause 7.1(a) to the date of repayment or transfer under this clause shall be repaid or transferred by the trustees of CAMAS's Scheme to the Trustees as soon as practicable.

7.3 The payment or transfer of the transfer payments under clauses 7.1 and 7.2 of this Agreement shall be made or satisfied as envisaged in clause 11 or in such other form as ECC, the Trustees and the trustees of CAMAS's Scheme may agree.

TRANSFER AMOUNT TO PURCHASE BENEFITS FOR TRANSFERRING MEMBERS

8. Subject to receipt of payments on account by CAMAS's Scheme (as envisaged in clause 7.1(a) of this Agreement), CAMAS shall procure that CAMAS's Scheme shall grant to each Transferring Member in respect of his pensionable service in (or credited in) the Pension Scheme before the Pension Transfer Date benefits which are, in the opinion of ECC's Actuary, identical to the benefits of the Pension Scheme (ignoring any benefits attributable to the AVC Fund or secured under the Insurance Policies) applicable to such Transferring Member.

ADDITIONAL VOLUNTARY CONTRIBUTIONS AND INSURANCE POLICIES

9.1 Any benefits attributable to the AVC Fund shall be disregarded for the purpose of calculating the Transfer Amount. Subject to CAMAS having complied with its obligations under this Agreement and to the fulfilment of the Transfer Conditions, on or before the Payment Date the Trustees shall transfer, or procure the transfer of, all building society accounts and insurance contracts representing the AVC Fund to the trustees of CAMAS's Scheme and CAMAS shall procure that the trustees of CAMAS's Scheme apply the proceeds of such accounts and policies in the provision of additional benefits under CAMAS's Scheme for and in respect of the relevant Transferring Members.

9.2 Any benefits secured by the Insurance Policies shall be disregarded for the purpose of calculating the Transfer Amount. Subject to CAMAS having complied with its obligations under this Agreement and to the fulfilment of the Transfer Conditions, on or before the Payment Date the Trustees shall transfer, or procure the transfer of, the Insurance Policies attributable to Transferring Members to the trustees of CAMAS's Scheme and CAMAS shall procure that the trustees of CAMAS's Scheme hold such Insurance Policies for the benefit of the relevant Transferring Members.

DISPUTES

10. Any dispute between CAMAS and ECC or CAMAS's Actuary and ECC's Actuary concerning the calculation of the Transfer Amount or any other matter of an actuarial nature shall, in the absence of agreement between them, be referred to an independent actuary agreed by CAMAS and ECC or, failing such agreement, appointed by the President for the time being of the Institute of Actuaries; such independent actuary shall act as an expert and not as an arbitrator and his decision shall be final and binding on the parties. His expenses shall be borne as the independent actuary may direct.

ASSETS TO BE COMPRISED IN THE TRANSFER PAYMENT

11.1 The transfer of the Transfer Amount as envisaged in clause 7.1 shall comprise such listed securities, units in unit trusts and cash as the Trustees and the trustees of CAMAS's Scheme shall agree.

11.2 Insofar as the transfer payment consists of listed securities or units in unit trusts, such securities and units in unit trusts shall (save as hereinafter provided) be valued at mid-market value.

11.3 If the Trustees and the trustees of CAMAS's Scheme are unable to agree on the nature or value of the assets to be comprised in the transfer payment within three months from the Pension Transfer Date or by the Payment Date, (whichever first occurs) each listed security or other holding of stocks or shares or units in unit trusts comprised in the Pension Scheme at the Pension Transfer Date shall be pro rated between the Pension Scheme and CAMAS's Scheme according to the percentage division of the assets of the Pension Scheme used by ECC's Actuary in calculating the Transfer Amount.

11.4 The Trustees and the trustees of CAMAS's Scheme shall make appropriate adjustments in relation to:

- (a) the apportionment of dividends, interest and other investment income attributable to a period including or ending on or before the Pension Transfer Date but received only after the Pension Transfer Date; and
- (b) the apportionment of any other income or receipt not mentioned above which is received after the Pension Transfer Date but attributable to a period including or ending on or before the Pension Transfer Date.

11.5 The Trustees agree to notify the trustees of CAMAS's Scheme of all receipts mentioned above.

RELEASE

12. Subject to receipt of the on account payment or transfer under clause 7.1(a) above from the Trustees pursuant to this Agreement, CAMAS shall

procure that the trustees of CAMAS's Scheme shall with effect from the Pension Transfer Date assume responsibility for all liabilities of the Pension Scheme to or in respect of the Transferring Members.

FURTHER ASSURANCE

13.1 The parties to this Agreement shall co-operate with each other and assist each other in implementing this Agreement and the matters envisaged by this Agreement and, in particular, shall use their reasonable endeavours to ensure the fulfilment of the Transfer Conditions (including, in the case of CAMAS, using reasonable endeavours to ensure that any declaration of intent, as referred to in paragraph 2.3 of Guidance Note GN16 issued by the Institute of Actuaries in England and Wales, is made and notified to the Pension Schemes Office of the Inland Revenue).

13.2 Without prejudice to the generality of clause 13.1, the parties to this Agreement shall use all reasonable endeavours to provide each other with such information as any party may reasonably require and shall make such elections and filings as may be necessary or reasonably desirable.

GOVERNING LAW

14.1 This Agreement is governed by, and shall be construed in accordance with, the laws of England.

14.2 Each of the parties hereby submits to the non-exclusive jurisdiction of the courts of England.

AS WITNESS this Agreement has been signed by the duly authorised representatives of the parties the day and year first before written.

Signed for and on behalf of)
ENGLISH CHINA CLAYS PLC)
)
)

Signed for and on behalf of)
CAMAS PLC)
)

Signed for and on behalf of)
ENGLISH CHINA CLAYS)
PENSION FUND)
TRUSTEES LIMITED)
)

Signed for and on behalf of)
ENGLISH CHINA CLAYS)
EXECUTIVE PENSION FUND)
TRUSTEES LIMITED)
)

SCHEDULE 5 - SHARE SUBSCRIPTION AGREEMENT

THIS AGREEMENT dated _____ 1994

BETWEEN

ECC EMPLOYEE TRUST LIMITED a company incorporated in England with registered number 231239 and having its registered office at 1015 Arlington Business Park, Theale, Reading RG7 4SA (the *Trustee*); and

CAMAS PLC a company incorporated in England with registered number 2902409 and having its registered office at Regent House, Rodney Road, Cheltenham, Gloucestershire GL50 1HX (*CAMAS*).

WHEREAS

(A) The Trustee is trustee of the English China Clays Employee Share Trust established by trust deed dated 12 May 1994.

(B) The Trustee proposes to enter into an agreement with English China Clays plc (*ECC*) under which it is obliged to distribute ordinary shares of 5p each in the capital of CAMAS (*Shares*) free of charge to certain optionholders (*Optionholders*) under the English China Clays Executive Share Option Scheme and the English China Clays Savings Related Share Option Scheme in the following circumstances (the *Qualifying Circumstances*):

- (i) where the Optionholders exercise their options on a date after Shares are first admitted to the Official List of the London Stock Exchange;
- (ii) where the Optionholders do not exercise their options for tax reasons but are permitted by ECC to receive Shares in any event; and
- (iii) in the case of options under the English China Clays Savings Related Share Option Scheme only, where the Optionholders are unable to exercise their options because ECC and CAMAS are "associated" (for the purpose of section 187 of the Income and Corporation Taxes Act 1988) but are permitted by ECC to subscribe for ordinary shares of 25p each in the capital of ECC (*ECC Shares*) on broadly equivalent terms to those of the options in any event.

The Trustee proposes to agree to make such distributions from time to time following receipt of Shares subscribed for by the Trustee pursuant to a notice from ECC to the Trustee setting out, inter alia, the number of Shares to be subscribed by the Trustee (a *Subscription Notice*).

(C) The basis on which the number of Shares to be distributed to Optionholders will be calculated is set out in the Schedule to this Agreement.

(D) This Agreement sets out the terms on which the Trustee will acquire Shares for distribution as mentioned in Recital (B).

Condition Precedent

1. The obligations of the parties under this Agreement are conditional on Shares being admitted to the Official List of the London Stock Exchange.

Subscription for Shares

2.1 Within 5 business days after receipt of a Subscription Notice from ECC the Trustee shall subscribe for the number of Shares stated therein by providing CAMAS with a copy of such Subscription Notice and a payment of 5p for each Share to be subscribed for.

2.2 Within 10 business days after receipt of a copy of the Subscription Notice and payment (as referred to in clause 2.1 above) from the Trustee, CAMAS shall allot and issue the number of Shares specified in the Subscription Notice to the Trustee, provided that the maximum number of Shares which CAMAS shall be required to allot and issue to the Trustee under this Agreement shall, in aggregate, be 8 million (subject to adjustment, in such manner as to ensure that the Trustee is able to subscribe for sufficient Shares to meet its obligations to ECC in respect of Optionholders, to reflect any alteration in the share capital of CAMAS). The Shares so issued shall be credited as fully paid, shall rank in all respects *pari passu* with existing issued Shares and shall rank in full for all dividends or other distributions declared after such issue in respect of Shares.

2.3 For the purposes of this clause 2, *business day* shall mean a day other than a Saturday or Sunday, on which banks are generally open for business.

Notices

3.1 Any communication or document which either party may decide to give or deliver in connection with this Agreement shall be:

- (a) in writing;
- (b) delivered by hand or sent by pre-paid first class post or by fax to the addressee at the address or fax number set out in clause 3.2 below (or such other address or fax number as may have been specified by the relevant party).

3.2 The current addresses and fax numbers of the parties for the purposes of clause 3.1 above are as follows:

Party	Address	Fax No.	
The Trustee	as above	0734 309501	F.A.O. Company Secretary
CAMAS	as above	0242 229060	F.A.O. Company Secretary

Non-assignment

4. Neither of the parties to this agreement shall be entitled to assign or otherwise transfer all or any of its rights or obligations under this Agreement.

AS WITNESS this Agreement has been signed by the duly authorised representatives of the parties the day and year set out above.

SCHEDULE

1. Subject to Note (1) below, the number of Shares to be distributed by the Trustee to Optionholders under the English China Clays Executive Share Option Scheme (other than certain excluded Optionholders, who will receive no Shares) shall be one Share for every ECC Share in respect of which the relevant Optionholder exercises an Option.
2. Subject to Notes (1) and (2) below, the number of Shares to be distributed by the Trustee to Optionholders under the English China Clays Savings Related Share Option Scheme shall be calculated as follows:

$$A = B \times 1.33$$

Where:

- A = the number of Shares to be distributed to the relevant Optionholder; and
- B = The number of ECC Shares in respect of which the Optionholder has exercised an option

- NB: (1) In certain circumstances, falling within Qualifying Circumstance (ii) in Recital (B) above, the number of Shares to be distributed to certain Optionholders may be reduced.
- (2) Where Qualifying Circumstance (iii) in Recital (B) above applies:
- (a) the figure of 1.33 in 2 above shall be replaced by such higher figure as the Trustee specifies as being necessary for it to meet its obligations to ECC in respect of relevant Optionholders; and
 - (b) "B" in 2 above shall be read as "The number of ECC Shares the Optionholder has subscribed for on the terms of (but not under) an option".
- (3) In the event of a variation in the share capital of either ECC or CAMAS the number of Shares to be distributed to Optionholders will be adjusted.

SIGNED)
for and on behalf of **ECC EMPLOYEE TRUST**)
LIMITED)

SIGNED)
for and on behalf of **CAMAS PLC**)

SCHEDULE 6 - COSTS

ECC shall be responsible for the proportion indicated of all fees and expenses incurred of J Henry Schroder Wagg Ltd, S G Warburg Securities, Towers Perrin Foster and Crosby, (in each case except as set out in (h) below), KPMG Peat Marwick, Freshfields, Shearnan & Sterling, Gerald Eve, Stephens and Scown, Lowe Bell Financial and Broadgate Consultants:

- (i) in preparing ECC for the process of demerging Construction Materials, including the process of revaluation and capital reduction for certain subsidiaries, and preparation and completion of the internal reorganisation of subsidiaries;
- (ii) in relation to the demerger, and properly for the purposes of demerger, including legal due diligence work and work performed by KPMG for the purposes of preparing the long form report, the short form report, the forecast/working capital adequacy reviews and in relation to the review or audit by KPMG of the 31 May 1994 accounts pack referred to in clause 11;
- (iii) in preparing and submitting No Action letter, and Rule 12 exemption application to the SEC;
- (iv) in relation to the preparation of the Circular to Shareholders and Listing Particulars;
- (v) in respect of incorporating CAMAS as a public limited company and in fulfilling the requirements for its admission to listing, including finalisation of Introduction Agreement and Registrars Agreement (subject to (k));
- (vi) 60% of the costs of setting up and seeking Inland Revenue approval for CAMAS plc share option schemes;
- (vii) 60% of the costs setting up and seeking requisite approval for CAMAS plc pension schemes, together with the cost of actuarial valuation of £20,000 ;
- (viii) in submitting, and obtaining, tax clearances in relation to the demerger;
- (ix) in drafting and finalising a shareholder dealing facility with Warburgs/Lloyds (but subject to (c) below);
- (x) in drafting and finalising an ADR holder dealing facility with Bank of New York including printing costs and additional fees and charges in connection with the operation of this dealing facility;

- (xi) in preparing certificates of title in relation to properties, requisite for the demerger;
- (xii) in drafting, finalising and implementing arrangements for ECC share option holders;
- (xiii) in drafting, finalising and implementing arrangements for 401K plan participants;
- (xiv) 40% of any legal fees and disbursements in connection with the leases to be entered into between ECC International Limited and ECC Construction Materials Limited in respect of sites at Blackpool, Indian Queens and Lee Moor, a Deed of Easement in respect of Melbur Blockworks and Supply Agreements entered into between ECC International Limited and ECC Quarries Limited for the supply of sand and/or stent to plant at the said Blackpool, Indian Queens, Lee Moor and Melbur sites (together referred to as the *Lease/Supply Agreements*).

CAMAS shall be responsible for costs incurred:

- (a) in setting up of new share option and pension schemes in excess of those referred to in (vi) and (vii) above;
- (b) in negotiating and finalising facility letters with CAMAS plc bankers in relation to its own banking facilities and in respect of any bank fees and charges in connection with establishing its own banking facilities together with all other fees and charges including without limitation any legal fees of the banks, ECC or Marchmont Holdings Limited;
- (c) in respect of printing costs and any additional fees and charges in connection with the operation of the shareholder dealing facility referred to in (ix) above;
- (d) in respect of work that CAMAS personnel have initiated (except as set out in (vi) and (vii) above);
- (e) in respect of advice given by advisers directly to CAMAS personnel (except as set out in (vi) and (vii) above);
- (f) in relation to establishing its relationship with Registrars (except the finalisation of the Registrar's Agreement referred to in (v) above);
- (g) in respect of all fees of Willis Corroon plc, insurance brokers, in relation to the Construction Materials stand-alone insurance programme with effect from 1 October 1993;
- (h) £80,000 in respect of work performed by J Henry Schroder Wagg & Co. Ltd, representing the interests of CAMAS plc, and in respect of work

performed by CAMAS' separately appointed teams at S G Warburg Securities (P Raper) and Towers Perrin Foster and Crosby (M Dukes);

- (i) in respect of work performed by its separately appointed teams, representing the interests of CAMAS plc, at Freshfields (E Braham) and KPMG (C. Cook) except to the extent that this work falls within paragraphs (i) to (xiv) above;
- (j) 60% of any legal fees and disbursements in connection with the Lease/Supply Agreements;
- (k) in respect of the legal fees of Clifford Chance (solicitors to the Introduction), the Stock Exchange listing fee and first annual charge;
- (l) in respect of CAMAS public relations activity and presentation material;
- (m) in respect of any costs, fees and expenses incurred in the release of ECC from any guarantees or other forms of security;
- (n) in respect of any costs, fees and expenses incurred in the assignment of any SWAP contracts from ECC to a CAMAS Company and in respect of the arrangement of new SWAPS for a CAMAS Company;
- (o) in setting up a separate insurance programme involving new insurers and administrative systems including claims handling;
- (p) in respect of the Lloyds Bank Registrars fees for all the services supplied in relation to the Demerger.

SCHEDULE 7 - TAX

INTERPRETATION

1.1 In this schedule, and without prejudice to schedule 1, the following definitions shall have the following meanings:

Accounts means the audited accounts of the company in question, including in the case of ECC its consolidated audited accounts, for the year ended 31 December 1993;

Accounts Date means 31 December 1993;

business day means a day (other than a Saturday) when banks are open for the transaction of normal banking business in London;

Clearance Correspondence means the correspondence pursuant to section 215 of the Taxes Act between KPMG Peat Marwick and the Inland Revenue's Company Tax Division (dated between 19 November 1993 and 29 April 1994 inclusive) in relation to the Demerger and the CAMAS Restructuring;

CAMAS Restructuring means the reorganisation involving CAMAS Companies undertaken by ECC in contemplation of the Demerger, including:

- (a) the transfer of certain CAMAS Companies to ECC;
- (b) the establishment of Marchmont Holdings Limited (*MHL*), Marchmont Overseas Investments Limited (*MOI*) and CAMAS;
- (c) the transfer of various CAMAS Companies to MHL and by MHL to MOI;
- (d) the reorganisation and/or capitalisation of debt owed by CAMAS Companies;
- (e) reductions of capital effected by CAMAS Companies;
- (f) arrangements entered into in relation to employee share options granted by ECC (including without limitation the agreement set out in schedule 5); and
- (g) any other dispositions or transactions effected with a view to facilitating the Demerger;

Final Period means:

- (a) in the case of a tax liability relating to US Federal income tax, the period between 30 April 1994 and Completion;

- (b) in any other case, the period between the Accounts Date and Completion;

Indemnified Party means, in the case of the indemnities set out in paragraph 2, the relevant CAMAS Company and, in the case of the indemnity contained in paragraph 11, the relevant ECC Company;

Indemnified Party relief means a relief arising to an Indemnified Party or a member of the same Group which either arises in respect of or can be fairly attributed to an event occurring or period falling after Completion, or was taken into account in computing the provision for deferred tax in the Accounts of the Indemnified Party or in eliminating such provision, or was included in those Accounts as an asset;

pre-Completion tax affairs has the meaning given in paragraph 12.1;

relief includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set-off in respect of any tax or relevant to the computation of any income, profits or gains for the purposes of any tax, or any right to repayment of or other saving of tax;

tax means any and all forms of taxes, levies, imposts, duties, withholdings and other charges in the nature of taxation chargeable by any tax authority, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them;

tax authority means any taxing or other authority in any jurisdiction competent to impose any tax liability;

tax claim means the issue of any notice, demand, assessment, letter or other document by or on behalf of any tax authority, or the taking of any other action by or on behalf of any tax authority, from which it appears that a tax liability may be imposed to which an indemnity contained in paragraph 2 or 11 could apply;

tax documents means the tax computations, returns, claims and other documents which ECC is required to prepare on behalf of the CAMAS Companies under paragraph 12;

tax liability means:

- (a) a liability of an Indemnified Party to make or suffer an actual payment of tax; and
- (b) the use or set off of any Indemnified Party relief in circumstances where, but for such use or set off, an Indemnified Party would have had an actual liability to tax in respect of which a claim could have been made under this schedule (the amount of the tax liability for these purposes

being deemed to be equal to the amount of that actual liability to tax); provided that the parties shall procure that reliefs other than any Indemnified Party relief are used, so far as reasonably practicable, to offset any such actual liability to tax, and if it cannot be determined whether an Indemnified Party relief or another relief is so used, it shall be assumed that another relief is used in priority to the Indemnified Party relief;

US State income tax means income or franchise tax imposed by a US State or other local tax authority within the United States.

1.2 References to income, profits or gains *earned, accrued or received* include such income, profits or gains being deemed to be or treated as earned, accrued or received for tax purposes.

1.3 References to paragraphs are to paragraphs of this schedule.

INDEMNITY BY ECC

2. ECC hereby covenants with CAMAS (for itself and as trustee for each other CAMAS Company) to indemnify each CAMAS Company against:

2.1 any tax liability which relates to UK corporation tax or US Federal income tax and which arises in respect of or in consequence of:

- (a) any income, profits or gains earned, accrued or received on or before Completion; or
- (b) any event which occurs or occurred on or before Completion (other than any tax liability arising in respect of profits earned after Completion as a result of such event);

2.2 any tax liability which is chargeable primarily against, or is properly attributable to, any ECC Company or any other company (other than a CAMAS Company) which was a subsidiary of ECC within the six years ending at Completion;

2.3 any tax liability which arises in respect of or in consequence of any aspect of the CAMAS Restructuring;

2.4 any tax liability which arises in respect of or in consequence of the Demerger, including without limitation any tax liability which would not have been incurred but for the Demerger Dividend failing to be an exempt distribution for the purposes of sections 213 to 218 of the Taxes Act and any tax liability arising in connection with the making of any chargeable payment, as defined in section 214 of the Taxes Act, by an ECC Company, but excluding any tax liability which would not have arisen but for a chargeable payment (as so defined) made by a CAMAS Company or made pursuant to a scheme or arrangement made with a CAMAS Company;

2.5 any Jersey tax liability which arises by reference to a deemed receipt of income in a period or periods falling prior to Completion in respect of interest free loans made by Ronez Limited to any ECC Company, but excluding any tax liability relating to those or similar loans following their assignment to, or replacement by loans to, any CAMAS Company;

2.6 any liability to US State income tax which is attributable to:

- (a) any ECC Company being treated as part of the same unitary group as any CAMAS Company;
- (b) any disallowance or restriction on deductibility of interest paid by any CAMAS Company to ECC America Holdings Inc;

together in each case with any costs and expenses referred to in paragraph 4.

EXCLUSIONS

3.1 The indemnity contained in paragraph 2.1 shall not cover any tax liability to the extent that:

- (a) the tax liability arises in respect of income, profits or gains earned, accrued or received in respect of the Final Period, or any event occurring during the Final Period, and which arises in the ordinary course of business of the CAMAS Company to which the tax liability relates; or
- (b) the tax liability arises as a result of any increase in rates of tax made after Completion or of any change in law or the practice of the relevant tax authority occurring after Completion; or
- (c) the tax liability arises as a result of a change made after Completion by any CAMAS Company in any accounting policy, any tax reporting practice, or the length of any accounting period for tax purposes, of that CAMAS Company; or
- (d) payment in respect of the tax liability, together with any related costs and expenses:
 - (i) would not exceed £5,000 (provided that for this purpose separate claims relating to the same subject matter shall be aggregated); or
 - (ii) would not cause the total amount of claims for which ECC would otherwise be liable under paragraph 2.1 (without regard to sub-paragraph (i) above) to exceed £500,000 (and so that if the aggregate liability exceeds that figure a claim may be made for the whole amount and not just the excess); or

- (e) ECC is liable in respect of the same subject matter under any other sub-paragraph of paragraph 2.

3.2 The indemnities contained in paragraphs 2.1 to 2.6 shall not cover any tax liability to the extent that:

- (a) provision or reserve in respect of that tax liability has been made in the Accounts of the Indemnified Party; or
- (b) the tax liability was paid or discharged before Completion; or
- (c) notice of a claim in respect of the tax liability is not given to ECC prior to the seventh anniversary of Completion; or
- (d) the tax liability would not have arisen but for a transaction, action or omission carried out or effected by any CAMAS Company after Completion otherwise than in the ordinary course of business or pursuant to a legally binding commitment created on or before Completion;
- (e) any relief other than an Indemnified Party relief is available, or is for no consideration made available by ECC, to the Indemnified Party to set against or otherwise mitigate the tax liability; or
- (f) the tax liability is a liability for stamp duty or stamp duty reserve tax to which paragraph 7 applies; or
- (g) the tax liability would not have arisen but for a breach of the warranty by CAMAS contained in paragraph 6.

COSTS AND EXPENSES

4. The indemnities contained in paragraph 2 shall extend to all reasonable costs and expenses properly incurred by any CAMAS Company in connection with a successful claim made under this schedule, or in satisfying or settling any tax liability in accordance with paragraph 8.

TAX ON INDEMNITY PAYMENTS

5. Any indemnity payment made under paragraph 2 shall be calculated on such a basis as will put the Indemnified Party in the same after tax position as it would have been in but for the matter giving rise to the indemnity payment in question.

WARRANTY BY CAMAS

6. CAMAS represents and warrants to ECC that so far as it is aware (having made reasonable enquiries but without any requirement to seek external advice) the Clearance Correspondence fully and accurately discloses all facts and circumstances material to the decision of the Inland Revenue under section 215

of the Taxes Act, insofar as those facts or circumstances relate to the CAMAS Group, and the board of CAMAS does not have any intentions inconsistent with anything said in the Clearance Correspondence.

STAMP DUTY

7. The parties agree that ECC will, where appropriate on CAMAS's behalf and with such assistance from CAMAS as it reasonably requires, be responsible for claiming relief from stamp duty in respect of the CAMAS Restructuring and the transfer of shares in MHL to CAMAS on the Demerger. If any liability to stamp duty or stamp duty reserve tax arises in relation to the CAMAS Restructuring or the transfer of shares to CAMAS on the Demerger it shall be borne by ECC.

NOTIFICATION OF CLAIMS AND CONDUCT OF DISPUTES

8.1 If any CAMAS Company become aware of a tax claim for which ECC would be liable under paragraph 2, CAMAS shall give notice to ECC of that tax claim as soon as possible (and in any event not more than 15 days after the CAMAS Company concerned becomes aware of such claim) and shall take or procure that there is taken such action as ECC may reasonably request to dispute, resist, appeal, compromise or defend the tax claim and any adjudication in respect thereof. ECC shall have the right (if it wishes) to control any proceedings taken in connection with such action, and shall in any event be kept fully informed and shall be provided with copies of all correspondence and documentation relating to such tax claim or action.

8.2 ECC shall reimburse to CAMAS and the CAMAS Company concerned their reasonable costs and expenses incurred in connection with any such action or proceedings as are referred to in paragraph 8.1.

8.3 Subject to paragraph 8.4, CAMAS shall procure that no tax claim, action or issue in respect of which ECC could be required to make a payment under this schedule is settled or otherwise compromised without ECC's prior written consent, such consent not to be unreasonably withheld, and CAMAS shall, and shall procure that each other CAMAS Company and their respective advisers shall, not submit any correspondence or return or send any other document to any tax authority where CAMAS or any such person is aware or could reasonably be expected to be aware that the effect of submitting such correspondence or return or sending such document would be to put such tax authority on notice of any matter which could give rise to, or could increase, a claim against ECC under this schedule, without first affording ECC a reasonable opportunity to comment thereon and without taking account of such comments so far as it is reasonable to do so.

8.4 If ECC does not request CAMAS to take any appropriate action within 60 days of notice to ECC, CAMAS or the CAMAS Company concerned shall

be free to satisfy or settle the relevant tax liability on such terms as it may reasonably think fit.

DUE DATE OF PAYMENT AND INTEREST

9.1 Subject to paragraph 9.2, ECC shall pay to the CAMAS Company concerned any amount payable under paragraph 2 on or before the date which is the later of the date ten business days after demand is made therefor by CAMAS and two business days before the first date on which the tax in question becomes recoverable by the tax authority demanding the same. Provided that, if the date on which the tax can be recovered is deferred following application to the relevant tax authority, the date for payment by ECC shall be such later date when the amount of tax is finally and conclusively determined. For this purpose, an amount of tax shall be deemed to be finally determined when, in respect of such amount, an agreement under section 54 of the Taxes Management Act 1970 or any legislative provision corresponding to that section is made or a decision of a court or tribunal is given from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit. Where the tax liability relates to UK corporation tax ECC may, instead of making payment to a CAMAS Company under this paragraph 9.1, discharge all or any part of the tax liability through the use of certificates of tax deposit held by it, and if it does so its liability to CAMAS hereunder shall be reduced or eliminated accordingly.

9.2 Where a claim under this schedule relates to the use or set off of an Indemnified Party relief, ECC shall pay to the CAMAS Company concerned the amount due under this schedule in respect thereof on the later of the date which is two business days before the first date on which tax which would not have been payable but for such use or set off becomes recoverable by the tax authority demanding the same, and ten business days after demand is made therefor by CAMAS, such demand to be accompanied by a copy of a certificate from the auditors of CAMAS (obtained or procured to be obtained by CAMAS but at the reasonable expense of ECC) that ECC has a liability of a stated amount in respect of such claim and that tax has, or will on a specified date, become payable as aforesaid, and by reasonably sufficient evidence of such use or set off and of such tax liability.

9.3 Any sum not paid by ECC on the due date for payment specified in paragraph 9.1 or 9.2 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at a rate of 2 per cent. per annum over the base rate from time to time of Barclays Bank plc from the due date to and including the day of actual payment of such sum, compounding six monthly, provided that such interest shall not accrue to the extent that the CAMAS Company concerned is adequately compensated by ECC's liability hereunder extending to interest or penalties arising after the due date. Any interest due under this paragraph shall be paid on the demand of CAMAS on or following the date of payment of such sum.

RECOVERY FROM THIRD PARTIES

10.1 If any payment is made by ECC under this schedule in respect of a tax liability and a CAMAS Company either receives, or is entitled or may be entitled either immediately or at some future date to recover or obtain, from any person (other than a CAMAS Company) a payment or relief in respect of the tax liability in question, then:

- (a) CAMAS shall notify ECC of that fact as soon as possible and if so required by ECC, and at ECC's reasonable cost, shall take such action as ECC may reasonably request to enforce such recovery or to obtain such payment or relief (keeping ECC fully informed of the progress of any action taken and providing it with copies of all relevant correspondence and documentation); and
- (b) if a CAMAS Company receives or obtains a payment or relief in respect of the tax liability in question, CAMAS shall pay or procure the payment to ECC the amount received or the amount that the CAMAS Company will save by virtue of the payment or the relief (less any reasonable costs of recovering or obtaining such payment or relief and any tax suffered thereon) to the extent that the payment to ECC does not exceed the payment originally made by ECC, and except where the amount so saved would otherwise have given rise to a claim under paragraph 2 (in which event no such claim shall be made).

10.2 Any payment required to be made by CAMAS pursuant to paragraph 10.1 shall be made:

- (a) in a case where a payment is received, within five business days of the receipt thereof; and
- (b) in a case where a relief is obtained, on or before the date on which tax would have become recoverable by the appropriate tax authority but for the use of such relief.

10.3 CAMAS shall procure that any such relief as is referred to in paragraph 10.2(b) is used in priority to any other relief, and in the absence of evidence to the contrary it shall be deemed to be so used. ECC shall be entitled to require that (at ECC's reasonable cost) the CAMAS's auditors shall certify the amount and date of use of such relief for the purposes of this paragraph 10.

10.4 Any sum not paid by CAMAS on the due date of payment specified in paragraph 10.2 shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at a rate per annum equal to the rate of 2 per cent. per annum over the base rate from time to time of Barclays Bank plc from the due date to and including the day of actual payment of such sum, compounding six monthly. Such interest shall be paid on the demand of ECC.

INDEMNITY BY CAMAS

11.1 CAMAS hereby covenants with ECC (for itself and as trustee for each other ECC Company) to indemnify each ECC Company against any tax liability which is chargeable primarily against, or is properly attributable to, any CAMAS Company, other than a tax liability which, if incurred by a CAMAS Company, would give rise to a liability under paragraph 2 (or would do but for paragraph 3.2(c)).

11.2 Paragraphs 3.2(a) to (e), 4, 5, 8, 9 and 10 shall apply to the indemnity contained in paragraph 11.1 above as they apply to the indemnities contained in paragraph 2, as if:

- (a) references to CAMAS and any CAMAS Company were references to ECC and any (or the relevant) ECC Company;
- (b) references to ECC were references to CAMAS.

MANAGEMENT OF PRE-COMPLETION TAX AFFAIRS

Rights and Obligations of ECC

12.1 ECC shall be responsible for the following tax affairs of the CAMAS Companies (*pre-Completion tax affairs*):

- (a) all matters relating to UK corporation tax for accounting periods ended on or before the Accounts Date; and
- (b) all matters relating to US Federal income tax for periods during which the US CAMAS Companies were part of the same consolidated group as English China Clays Inc for US Federal income tax purposes,

and ECC shall accordingly, at its own cost, prepare and submit all tax returns, claims, elections, surrenders, disclaimers, notices and consents as may be required or that ECC considers appropriate in respect of such tax affairs, and shall conduct all negotiations and correspondence and be responsible for reaching any agreements relating thereto.

12.2 Subject to paragraph 12.3 ECC shall not take any action in the course of managing the pre-Completion tax affairs which could have an adverse effect on the liability to tax of a CAMAS Company following Completion, except to the extent that such effect was taken into account in preparing the Accounts of a CAMAS Company or CAMAS's written consent is obtained.

12.3 ECC shall be entitled to procure that any losses for US Federal income tax purposes which arise to any CAMAS Company in respect of a period or periods prior to Completion are made available to the ECC US group for no value, or in the case of the period from 1 January 1994 to 30 April 1994 for

payment at a rate of 20% of the amount of the losses. Such payment shall be made, based on estimated figures, on 15 June 1994, and shall be subject to subsequent adjustment to reflect the actual amount of losses used by the ECC US group. Any further payment or repayment to reflect such adjustment shall be made at the date of filing of the relevant consolidated return (and if appropriate promptly following a subsequent audit) and shall carry interest at US prime rates from 15 June 1994 to the date of payment.

12.4 For the avoidance of doubt ECC shall be entitled to surrender or procure the surrender by any ECC Company to any CAMAS Company of losses or other amounts eligible for group relief (in accordance with Chapter IV of Part X of the Taxes Act) and the benefit of any amount of advance corporation tax (in accordance with section 240 of the Taxes Act) for any period ended on or before the Accounts Date. ECC may require payment for such surrenders in accordance with the normal practice of the ECC group to the extent that the liability to tax discharged by the surrender was provided in the relevant CAMAS Company's Accounts, or to the extent that the surrender causes a repayment of tax not reflected in those Accounts.

12.5 ECC shall procure that:

- (a) CAMAS is kept informed of the progress of all matters relating to the pre-Completion tax affairs;
- (b) CAMAS receives copies of all written correspondence with any tax authority insofar as it is relevant to the pre-Completion tax affairs, together with copies of all capital allowance schedules and other working papers required by any CAMAS Company in connection with its tax affairs for periods ending after Completion;
- (c) no tax document is submitted to any tax authority which is not, so far as ECC is aware, true and accurate in all respects, and not misleading; and
- (e) no Material Agreement is reached with any tax authority without the prior approval of CAMAS (such approval not to be unreasonably withheld or delayed).

For the purposes of sub-paragraph (e) above, Material Agreements are agreements which CAMAS reasonably considers may be of material importance to CAMAS as regards either the future relationship with the tax authority concerned, or the future liability to tax, of any CAMAS Company.

12.6 ECC agrees to devote reasonable resources to dealing with pre-Completion tax affairs, and shall use reasonable endeavours to ensure that they are finalised within a reasonable period after Completion.

Obligations of CAMAS

12.7 CAMAS shall procure that:

- (a) ECC is promptly provided with all information, access to documents and assistance as it reasonably requires (including the signing of tax documents as requested by ECC) to enable ECC to discharge its obligations under paragraph 12.1 or to take any action contemplated by paragraph 12.3 or 12.4;
- (b) ECC is promptly sent a copy of any communication from any tax authority insofar as it relates to the pre-Completion tax affairs; and
- (c) there is given to such person or persons as may for the time being be nominated by ECC authority to conduct pre-Completion tax affairs, and that such authority is confirmed to any relevant tax authority.

CONDUCT OF OTHER TAX AFFAIRS

13. Subject to paragraph 8, CAMAS or its duly authorised agents shall have sole conduct of all tax affairs of the CAMAS Companies which are not pre-Completion tax affairs and shall be entitled to deal with such tax affairs in any way in which it considers fit.

SCHEDULE 8 - LITIGATION

A. Spanish Legal Proceedings

1. CAMAS shall procure that Prefabricados de Hormigon Lurgain S.A. (*Lurgain*) will continue in its own name, subject to paragraph 2 below, with the arbitration proceedings involving Explotaciones Caoliniferas Espanolas SA (*ECESA*) and any other legal proceedings before any other competent tribunal or court relating to the sale by the ECC Group of the assets of Compania Espanola de Caolines (*CEC*) and the shares of Caosil SA and related disputes and matters (the *Proceedings*) and that Lurgain will not make any admission of or settle any of the Proceedings without the prior written consent of ECC.
2. ECC, at its own expense, shall have the conduct of the Proceedings (including the right to make any appeals and to appoint advisers) and shall also have the conduct of any negotiations or settlement relating thereto and CAMAS will give, and procure that Lurgain gives, ECC all reasonable co-operation, access and assistance for the purposes of the Proceedings and will procure that Lurgain pays forthwith to ECC any payment (less any taxation payable thereon) which is received by Lurgain in connection with the Proceedings.
3. Subject to CAMAS complying in all material respects with its obligations in paragraphs 1 and 2 above, ECC undertakes to CAMAS (for itself and as agent and trustee for Lurgain) to indemnify and hold Lurgain harmless (on an after tax basis) against any liability of Lurgain relating to the Proceedings including without limitation legal and other costs relevant to the Proceedings and the cost of liability resulting from any determination, judgement or court order whatsoever relating to the Proceedings.

B. Other Claims

1. ECC undertakes to CAMAS (for itself and as agent and trustee for Lurgain) to indemnify and hold Lurgain harmless (on an after tax basis) against any obligations or liabilities of CEC which CEC either undertook contractually or incurred to third parties by reason of any act or omission on the part of CEC (but always excluding any liability for taxation - the subject of schedule 6) prior to its merger with Lurgain on 31 December 1992 provided that CAMAS shall procure that Lurgain shall:
 - (a) notify ECC as soon as practicable of any such obligations or liabilities which may give rise to a claim being made under this indemnity;
 - (b) permit ECC to have the right to deal with all claims relating to such obligations or liabilities (including the conduct of any litigation arising);
 - (c) give ECC all reasonable co-operation, access and assistance for the purposes of any such claims or conducting any such litigation; and

- (d) use its reasonable endeavours to mitigate any loss or damage which it may suffer or incur as a result of such obligations or liabilities.

2. CAMAS shall forthwith notify ECC of any right which CEC has to claim against any third party and which relates to the period prior to its merger with Lurgain on 31 December 1992. CAMAS shall procure that Lurgain permits ECC to have the right to deal with all such rights (including the conduct of any litigation arising) and gives ECC, at ECC's expense, all reasonable co-operation, access and assistance for the purpose of enabling ECC to pursue such rights against the relevant third party or conducting any such litigation arising. Without prejudice to the foregoing, CAMAS shall procure that Lurgain pays, or makes available, forthwith to ECC any payment, or other benefit, (less any taxation payable thereon) which is received by, or available to, Lurgain in connection with any such right or which is otherwise received by, or available to, Lurgain and which relates to the business carried on by CEC in the period prior to the said merger with Lurgain.

SCHEDULE 9 - INSURANCE

A. Joint insurance policies prior to 1st October 1993

The following insurance policies are subject to possible premium adjustment:

1. Property Damage/Business Interruption (1992/93) - A maximum 15% no claims discount based on the Group net premium may be paid to ECC, in which event ECC shall allocate a proportion of the discount to CAMAS based on the premium/claims ratio of the CAMAS Companies.
2. Retro rated liability premium (1992/93) - If CAMAS Group claims paid and outstanding exceed the threshold limit of £868,389 at the first adjustment date (31st March 1994), then a maximum additional premium of £925,000 is payable by CAMAS to ECC. Subsequent annual adjustments are made until resolution or 31st March 2000. CAMAS has agreed that an initial independent claims audit shall be carried out by Willis Corroon Management (Guernsey) Limited during April 1994. During 1997 the parties shall together review the feasibility of them appointing an independent expert for the purposes of making a final assessment of adjusted premium liability prior to the term otherwise provided for adjustment (but without commitment to either party to agree any such appointment or the basis proposed for such final assessment).
3. Motor Policy (Own Damage) 1992/1993 - Additional premium may be due from, or rebates paid to, ECC if the total Group fleet size varies by more than 10%, in which event CAMAS will pay any additional premium to ECC, or ECC will pay any rebate to CAMAS (as the case may be), in either case based on the number of vehicles declared.
4. Engineering/Inspection Eagle Star policies 1992/93 and prior years - Inspection fees are charged by Eagle Star to ECC following CAMAS site visits. CAMAS shall reimburse ECC for such fees based on site visits or ECC shall reimburse CAMAS (as appropriate).
5. Contractors All Risks Policies 1992/93 and prior years - Adjustable on turnovers and a three year claims record and payable to ECC or reimbursed by ECC as appropriate.
6. Group Marine Cargo 1992/93 and prior years - Declarations are made on an ad hoc basis and payable to ECC as appropriate.

B. Policy Deductibles

There are various Deductibles under most policies for 1992/93 and for prior years. The Deductible levels which are subject to change at each renewal are agreed by CAMAS. CAMAS will be required promptly to reimburse payments made by ECC in respect of any CAMAS claims which are due for payment.

CAMAS will also be required promptly to reimburse ECC in sterling for UK placed Policies and bear any currency fluctuation in line with past practice.

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