

**Court File No. CV-12-9539-00CL**

**Timminco Limited  
Bécancour Silicon Inc.**

**EIGHTH REPORT OF THE MONITOR**

**May 20, 2012**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**EIGHTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On January 3, 2012, Timminco Limited (“**Timminco**”) and Bécancour Silicon Inc. (“**BSI**”, together with Timminco, the “**Timminco Entities**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), granting, *inter alia*, a stay of proceedings against the Applicants until February 2, 2012, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor of the Applicants (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. The Stay Period has been extended a number of times. Pursuant to the Order of the Honourable Mr. Justice Morawetz dated April 27, 2012, the Stay Period currently expires on June 20, 2012.

3. Pursuant to the Order of the Honourable Mr. Justice Morawetz granted March 9, 2012 (the “**Bidding Procedures Order**”), the Timminco Entities were authorized to enter into the Stalking Horse Agreement and the Bidding Procedures were approved, each as defined in the Monitor’s Fourth Report.
4. The Monitor has filed reports on various matters relating to the CCAA Proceedings. The purpose of this, the Monitor’s Eighth Report, is to inform the Court of written questions put to the Monitor by counsel to DCC following service of the Timminco Entities’ motion for approval of the Successful Bid (the “**DCC Questions**”) and the Monitor’s responses to the DCC Questions.
5. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants’ books and records, certain financial information prepared by the Applicants and discussions with the Applicants’ management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor, the Bidding Procedures Order or in the Initial Order.

### **THE DCC QUESTIONS AND THE MONITOR’S RESPONSES QUESTIONS**

7. The DCC Questions and the Monitor’s answers to those questions are set out in Appendix A hereto.

8. A number of the DCC Questions and the Monitor's answers deal with differences between the QSI APA and the Wacker APA, each as defined in the Monitor's Seventh Report. For ease of reference, a "black-line" comparison of the Wacker APA against the QSI APA is attached hereto as Appendix B<sup>1</sup>.

The Monitor respectfully submits to the Court this, its Eighth Report.

Dated this 20<sup>th</sup> day of May, 2012.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Timminco Limited and Bécancour Silicon Inc.



Nigel D. Meakin  
Senior Managing Director



Toni Vanderlaan  
Managing Director

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<sup>1</sup> Only those schedules created in Word are included in the black-line comparison

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# Appendix A

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## The DCC Questions and the Monitor's Responses

## DCC Questions for the Monitor

### Assessments of Bids

#### **1. Please provide any financial analysis prepared for or by the Company or rationale used by the company or the Monitor to assist it and the Monitor in valuing the bids relative to each other either prior to or during the Auction.**

In evaluating the Portion Bids of QSI and Wacker relative to each other, the Timminco Entities, in consultation with the Monitor, considered the differences between bids in cash consideration, non-cash consideration, terms and conditions potentially impacting closing risk, time to complete and, once cash consideration potentially exceeded secured debt and prior ranking claims, factors impacting potential claims against the estate.

The first time a monetary value was ascribed by the Timminco Entities to a non-cash element of a bid during the Auction was when Wacker amended its bid to partially assume certain indemnities provided by BSI to QSLP and/or DCC. The assumption of the indemnity obligations was subject to certain conditions. The Monitor's understanding of the effect of these terms in the Wacker APA is as follows:

- If QSLP and/or DCC were held liable for the obligations of BSI under the BSI Union Pension Plan and the BSI Union Benefit Plan (collectively, the "**BSI Plans**"), Wacker would indemnify DCC and/or QSLP, without set-off or counterclaim, for 75% of the aggregate amount for which DCC and/or QSLP collectively were held liable under the BSI Plans (the "**BSI Plans Indemnity**"). This assumption of liability is provided for in Section 2.4(b) of the Wacker APA. As at this time, no finding has been made that QSLP or DCC is liable for BSI's obligations under the BSI Plans. The Monitor has been advised by the Timminco Entities that the Union has asserted that QSLP is liable for such obligations, however, this assertion is being actively contested by QSLP and QSLP denies any such liability;
- Wacker agreed to provide the BSI Plans Indemnity, subject to the following conditions being satisfied: (i) DCC provides the DCC consent, (ii) DCC confirms that Wacker is not liable for the broad indemnity obligations under Section 9.1 of the Framework Agreement and (iii) DCC indemnifies Wacker and QSLP for 25% of any amounts under the BSI Plans for which Wacker or QSLP may be held liable (collectively, the "**Limited Indemnity Conditions**");

- Wacker also agreed to assume 75% of BSI’s obligations under Section 6.7(f) of the Framework Agreement. Section 6.7 of the Framework Agreement provides, in summary, that BSI will pay, up to a maximum amount of \$5 million in claims paid by QSLP, with respect to certain post-retirement benefits for employees transferred to QSLP from BSI (the “**6.7 Liability**”). The mechanic for this partial assumption of liability is provided for in the definition of “QSLP Contracts” in the Wacker APA (the “**Section 6.7(f) Indemnity**” and together with the BSI Plans Indemnity, the “**Limited Indemnity**”).
- The Section 6.7(f) Indemnity was conditional upon DCC confirming that Wacker was not liable for the broad indemnity obligations under Section 9.1 of the Framework Agreement (already contemplated by the Limited Indemnity Conditions).
- Wacker also agreed to waive any rights of subrogation acquired by it by reason of payment on the Limited Indemnity.

The Timminco Entities, in consultation with the Monitor, considered, among other things, the financial impact of the potential reduction of claims in the BSI estate as a result of the proposed Limited Indemnity, that is, if Wacker partially satisfied an indemnity claim that may, in certain circumstances, be asserted against BSI’s estate, this could potentially reduce the overall claims against BSI’s estate, resulting in higher recoveries for other creditors of BSI. A calculation was performed to estimate the incremental Cash Purchase Price that would be required in a competing bid that did not include the Limited Indemnity to result in the same distribution to unsecured creditors of BSI. In that calculation, a number of assumptions were made, including the following:

- That the DCC Consent would be provided in accordance with the conditions set out in the Wacker APA, although the Timminco Entities and the Monitor’s understanding of DCC’s position prior to the Auction was that all of the Contracts to which DCC was a party would have to be assumed by a purchaser in order for DCC Consent to be provided;
- That QSLP and/or DCC was found to be liable for the maximum amount of claims in respect of the BSI Plans, although such liability is denied and contested by QSLP and that QSLP and/or DCC would have a provable claim for the maximum amount (although, as discussed in the response to a later question, that may not be the case as a result of the potential application of the “rule against double proof”);

- That the Cash Purchase Price would be sufficient to repay the secured indebtedness in favour of IQ and all prior ranking claims in full;
- That no “deemed trust” or other claim for priority over the indebtedness in favour of IQ would be made in respect of the BSI Plans, or if such claims were made, that they would be dismissed; and
- The value of unsecured claims against BSI.

In addition to these assumptions, it was also discussed with bidders that there were potential monetary costs that were not factored into the foregoing assessment, including (i) additional DIP indebtedness resulting from the requirement in the Wacker bid that the appeal period for the Approval and Vesting Order expire prior to closing (such additional indebtedness would reduce the amount available to unsecured creditors, thereby reducing the potential benefit of the assumption of the Limited Indemnity); and (ii) potential litigation costs associated with obtaining the Assignment Order for a bid where the DCC Consent was not forthcoming (this assumption was weighed in Wacker’s favour as it was thought that, on balance, the Wacker Limited Indemnity could make the DCC Consent more likely to be obtained on a consensual basis than the alternate QSI bid).

The calculation shared with the bidders on a whiteboard at the Auction is reproduced in Schedule A hereto.

**2. Were monetary values assigned to the non-monetary elements of the bid (i.e. elements other than cash price) and if so, were these values communicated to bidders? At any time? At each round of bidding?**

The Timminco Entities assigned a positive monetary value of \$500,000 to the aggregate differences in the non-cash elements of the Wacker APA that were considered to be positive as compared to the QSI APA and a negative monetary value of \$500,000 to the aggregate differences in the non-cash elements of the Wacker APA that were considered to be negative as compared to the QSI APA. The latter included the various matters set out in paragraph 23 of the affidavit of Peter Kalins sworn May 9, 2012 (the “**Kalins Affidavit**”), including the specific terms of section 8.14 of the Wacker APA (Severability). This provision provides that if a section of the Wacker APA is unenforceable the balance of the Wacker APA will remain enforceable in accordance with their terms, subject to certain exceptions. Included in the exceptions to the severability clause was section 2.5(a) (the section stating that debts, liabilities, obligations or claims relating to Benefit Plans, Collective Agreements, Employees, Pension Plans and



Post-Retirement Liabilities would not be assumed by Wacker). The Wacker bid provided that section 2.5(a) will not be severed from the balance of the Wacker APA if section 2.5(a) was found not to be enforceable.

The QSI APA had a similar severance clause to that found in the Wacker APA, however, the identical provision in section 2.5(a) was not included in the list of exceptions to the severance clause in the QSI APA. Thus, relative to the QSI APA, there was perceived to be an increased closing risk as Wacker may assert that if section 2.5(a) is found not to be enforceable, the balance of the Wacker APA is also not enforceable and Wacker is thus not required to close. The concern in respect of section 8.14 was discussed with Wacker who acknowledged the validity of the Timminco Entities' concern but Wacker declined to remove the reference to section 2.5(a) in section 8.14 of its Portion Bid. The assessed net impact was communicated by the Timminco Entities to Wacker and QSI when that assessment was performed. Wacker expressed the view that the assessment did not adequately value the Limited Indemnity.

The assessment was performed following the introduction by Wacker of the Limited Indemnity at round 36 of the Auction.

**3a. What monetary value (positive or negative) was placed on the elements of the Wacker bid described in (a)-(c) at para 23 of the May 9th affidavit of Mr. Kalins and how were these values determined?**

See responses to questions 1 and 2 above.

**At what point in the bidding were these elements introduced?**

The points listed in paragraph 23(a)-(c) of the Kalins Affidavit were introduced in the Wacker APA at the following times: with respect to 23(a) (the Limited Indemnity) at round 36 of the bidding; with respect to 23(b) (the severability provision) in the bid submitted by Wacker at the Phase II Bid Deadline; with respect to 23(c) (anti-trust provision) in the bid submitted by Wacker at the Phase II Bid Deadline.

**What monetary value were they given in the round in which they were first introduced?**

See responses to questions 1 and 2 above.

**3b. What monetary value (positive or negative) was placed on the elements of the QSI bid described in para 31, 32, 33 and (c) of para 35 of the May 9th affidavit of Mr. Kalins, (including the purchaser's condition in 5.1(d) of Consents and Approvals of Governmental Authority, the exclusion of employee, retiree, and pension obligations under sections 2.5(a) and (g), and the exclusion in Schedule F of the Framework Agreement, the Intellectual Property Assignment Agreement, and the Pension Transfer Agreement under the QSI Agreement of Purchase and Sale) and how were these values determined? At what point in the bidding were these elements introduced? What monetary value were they given in the round in which they were first introduced?**

In comparing the bids, only those areas of divergence were considered; accordingly, the Timminco Entities did not place specific monetary value on areas where bids were consistent. With respect to paragraph 31 of the Kalins Affidavit (the exclusion of certain assets), the Portion Bids of Wacker and QSI were consistent, other than Wacker's provision for the Limited Indemnity, subject to the Limited Indemnity Conditions; the excluded assets used in BSI's solar grade silicon business were valued based on the Ferroatlantica Portion Bid, which was equally applicable to both the Wacker and QSI bids, as both bids excluded the solar assets.

With respect to paragraph 32 of the Kalins Affidavit (debts and liabilities under Contracts), the items described in 32(a) are consistent between the bids other than the Wacker provision for the Limited Indemnity, subject to the Limited Indemnity Conditions.

With respect to paragraph 33 (excluded liabilities), the items described in 33(a) are consistent between the bids other than the greater closing risk associated with the Wacker APA resulting from the reference to section 2.5(a) contained in section 8.14, the severability clause, as described in the answer to question 2; the items described in 33(b) are consistent between the bids other than Wacker's provision of the Limited Indemnity, subject to the Limited Indemnity Conditions; the items described in 33(c) are consistent between the bids other than Wacker's provision of the Limited Indemnity, subject to the Limited Indemnity Conditions.

With respect to paragraph 35(c), the items described are consistent between the bids other than the following (i) Wacker's provision of the Limited Indemnity, subject to the Limited Indemnity Conditions; (ii) the requirement for a consent to assign or an Assignment Order in respect of the supply contract with Wacker contained in the QSI APA; and (iii) the requirement for Anti-trust Clearances contained in the Wacker APA.

With respect to Consents and Approvals of Governmental Authority in connection with condition 5.1(d) of the QSI APA, the QSI APA and the Wacker APA are consistent other than the requirement for the Anti-Trust Clearances contained in the Wacker APA.

With respect to sections 2.5(a) and 2.5(g), these provisions are consistent between the QSI APA and the Wacker APA other than (i) Wacker's provision of the Limited Indemnity, subject to the Limited Indemnity Conditions; and (ii) the higher perceived closing risk associated with the reference to 2.5(a) in section 8.14 (severability) in the Wacker APA.

The assessment of these various elements, the point at which they were introduced and the monetary value ascribed are described in the responses to previous questions.

**4. What monetary value was given to (a) the assumption by Wacker of the Framework Agreement and Business Transfer Agreement (subject to the limitations described in its bid) including the \$5 million obligation thereunder and (b) Wacker's assumption and indemnity in favour of DCC for up to 75% of any potential liability of QSLP for the BSI pension and benefit liabilities? How were these features assessed when considering the likelihood of DCC consenting to the assignment? More generally, was any incremental value assigned to a bid based on the likelihood of the bidder getting DCC consent?**

See responses to previous questions.

On balance, these features were thought to make it more likely that Wacker could ultimately be able to reach a consensual consent to assignment with DCC than QSI. However, the Timminco Entities and the Monitor understood DCC's position to be that DCC would not consent to an assignment of anything less than all DCC agreements and that DCC was prepared to take the necessary legal steps to avoid such a result. The ability to assign contracts under section 11.3 of the CCAA was also a factor that was considered.

The incremental value assigned as a result of Wacker's provision for the Limited Indemnity, subject to the Limited Indemnity Conditions, is discussed in the responses to previous questions.

**5. In the event that the QSI bid is approved, DCC will have a substantial claim against the BSI estate for the value of the BSI indemnities in the Framework Agreement. Was this taken into account in assessing the relative value to the estate of the QSI and Wacker**

**bids? Was any value given for the assumption of BSI liabilities contained in the Wacker bid and not contained in the QSI bid? If not, why not?**

The potential claims of DCC against the BSI estate were taken into account in assessing the relative merits of the QSI APA and the Wacker APA as described in the responses to the questions above.

It is not clear at this stage that DCC will have a claim against BSI in respect of the BSI indemnities other than in respect of the \$5 million 6.7 Liability (which liability is an indemnity by BSI of claims against QSLP and which costs Timminco management has informed the Monitor that they ultimately expect to have to be paid). In the event that the QSI APA is approved, it is the Monitor's understanding that any DCC claim in respect of the BSI pension and benefits liabilities is a contingent claim based on an indemnity for claims that also exist against BSI's estate directly. It is also the Monitor's understanding that a necessary condition to enable DCC to prove such an indemnity claim against the BSI estate is that QSLP or DCC be found to be liable for obligations of BSI under the BSI Plans (which liability QSLP expressly denies). Further, it is the Monitor's understanding that either the union or DCC/QSLP may have a claim against the estate for the amounts in questions, but that the aggregate of the claims would only be the amount of the BSI liability in respect of the underlying obligations. Accordingly, any valid claim of DCC in respect of those liabilities would not increase the overall claims against BSI's estate as there should be a corresponding reduction in the Union claim for such amounts and therefore the net aggregate claims would be unchanged.

In comparing the relative potential claims assuming that the QSI APA is completed with a scenario where the Wacker APA would be completed, with respect to the 6.7(f) Liability, the Timminco Entities informed the Monitor that they do anticipate that QSLP will ultimately incur those costs, though the timing of such costs is uncertain. Based on information provided by the Timminco Entities, the Monitor calculates that the incremental claim of DCC and/or QSLP against the BSI estate in respect of the 6.7 Liability represents an estimated increase of approximately 2% in total claims against BSI assuming that there is no liability on the part of QSLP or DCC for the BSI Plans for which QSLP or DCC could assert a subrogation claim against BSI's estate. In the event that a subrogation claim in respect of liability on the part of QSLP or DCC is also allowed as a proven claim against BSI's estate and there would otherwise be no claim for the direct liability in respect of the BSI Plans (because the liability is satisfied by QSLP, Wacker waives its subrogated claim in accordance with the terms of the Wacker APA and the union does not make a claim against BSI for those amounts), the incremental claim of QSLP and/or DCC represents an estimated increase of approximately 12% in total claims in the QSI scenario as compared to the

Wacker scenario. The forgoing is all based on information provided by the Timminco Entities and the assumption that the Limited Indemnity Conditions are satisfied.

Other than the assumption of additional QSLP Contracts and the Limited Indemnity if the Limited Indemnity Conditions are satisfied, there are no BSI liabilities assumed under the Wacker APA that are not assumed under the QSI APA.

**6. How did you assess the relative strength of QSI's (based on its own balance sheet, not that of its parent) and Wacker's financial positions and their relative abilities to perform obligations as a partner in QSLP?**

The relative financial strengths of the two bids were not specifically assessed. The Timminco Entities did consider the risks of closing each bid, including the likelihood of being able to satisfy the requirements to obtain the Assignment Order in the event that the DCC Consent was not forthcoming.

**7. Did the Company or the Monitor request that QSI's obligations under the assumed agreements be guaranteed by Globe? If not, why not? Did the Monitor or the company ascribe a value (negative or positive) to their being no guarantee of the obligations under such agreements, in contrast to the Wacker bid that contains an unlimited guarantee in respect thereof. If so, what value was ascribed, and if not, why not?**

No request that QSI's obligations under the assumed agreements be guaranteed by Globe was made. The Timminco Entities were of the view that the requirements for an Assignment Order could be satisfied in the event that Consents were not forthcoming.

The assessment of the relative merits of each bid is described in the responses to earlier questions.

**8. What information was provided, if any, by QSI and Wacker, and what analysis was done to compare the relative likelihood of QSI and Wacker obtaining the regulatory consents and approvals which are conditions to both bids?**

Wacker provided various information regarding requirements for Anti-trust Clearances and its counsel's positive assessment of the likelihood of successfully obtaining such consents and the potential timing of same.

With respect to Consents and Approvals of Governmental Authority, the QSI APA and the Wacker APA are consistent other than the requirement for the Anti-Trust Clearances contained in the Wacker APA.

### Conduct of the Auction

**9. Based on the call we received from the Monitor on April 25th, we are aware that at least one bidder asked to speak with DCC during the Auction on April 25<sup>th</sup> if not earlier. At what point on the 24th and 25th of April did this bidder first ask to speak with DCC? Was such a request made more than once and if so, how frequently and when? What was the Company's and the Monitor's response and if the request was refused by the Monitor or by the Company, explain why.**

As described at paragraph 21 of the Kalins Affidavit, Wacker first asked for an adjournment of the Auction in order to have further discussions with DCC on the morning of April 25<sup>th</sup>. While there were various discussions about the topic at that time the Monitor has no recollection of such a request being made at other times during the Auction.

Pursuant to the Bidding Procedures, the Timminco Entities set the rules for and conducted the Auction, in consultation with the Monitor. Following consultation with the Monitor (which stated that it did not object to the adjournment requested by Wacker), the Timminco Entities declined to adjourn the Auction for the purposes of allowing bidders to have further discussions with DCC. A number of the factors considered in reaching that decision are set out in the Kalins Affidavit. In addition to the factors listed therein, the Timminco Entities considered the views of the Monitor, other bidders, including the specific objections of QSI, the potential impact of adjourning the Auction for several hours, potential issues that may arise from a refusal to grant the adjournment and potential issues that may arise from agreeing to such an adjournment over the objections of QSI.

**10. Do you concur that DCC was asked by the Company and the Monitor to be available and was available on the date scheduled for the auction, April 24th? Do you concur that no bidder was permitted to contact DCC on April 24th?**

The Monitor concurs that it did, in advance of the Auction, ask DCC representatives to be available for potential consultation. The Monitor does not recall whether the request was specifically for

representatives to be available “on the 24<sup>th</sup>” or “during the Auction”, although at that time the Monitor expected that the Auction would be completed on the 24<sup>th</sup> and had no expectation that the Auction would span two days.

The Monitor does not concur with the statement that “no bidder was permitted to contact DCC on April 24<sup>th</sup>”. The Monitor does not recall any bidder requesting permission to contact DCC on April 24<sup>th</sup>.

**11. Mr. Kalins states in his affidavit that, on April 25<sup>th</sup>, the day following the date scheduled for the auction, the Monitor asked if DCC was available for a discussion with a bidder and that one of the relevant representatives of DCC was not available until 1:30 in the afternoon but was available then. (a) Do you concur that alternative suggestions were provided to the Monitor by DCC for an earlier meeting? If so, were they communicated to the Company? If so, why were they rejected? (b) Who was the bidder that requested consultation with DCC? (c) Did any bidder object to any other bidder consulting with DCC? Specifically, did Globe object to Wacker consulting with DCC? If so, what was the basis for the objection and why did the Company not overrule that objection? Why was any request to consult with DCC denied?**

The Monitor acknowledges that having earlier informed the Monitor that the key representative of DCC would not be available until 1:30 p.m. on the 25<sup>th</sup> because he was attending a funeral, counsel to DCC subsequently called the Monitor back in an effort to accommodate the request and suggested that discussions could occur with other representatives of DCC earlier than 1:30 p.m., though the key decision maker would still have to be consulted when he became available thereafter. The alternative suggested was immediately communicated by the Monitor to the representatives of the Timminco Entities. The Timminco Entities considered the alternative and, for the reasons described in the response to question 9, confirmed the decision to not grant the requested adjournment.

As stated in the Kalins Affidavit, the adjournment was requested by Wacker.

QSI objected to an adjournment of the Auction for the purposes of further discussions with DCC stating that, in its view, diligence was required to have been completed prior to the Auction, that bidders had been provided the opportunity to consult with DCC prior to the Auction and that such an adjournment would not be consistent with the nature or purposes of an auction. The request for an adjournment was denied by the Timminco Entities for the reasons set out previously.

**12. Were any discussions permitted with third parties during the auction and if so, who were the third parties?**

Discussions were permitted between certain bidders participating in the Auction in the presence of the Monitor. Other than the request by Wacker to adjourn the Auction to allow for discussions with DCC, the Monitor does not recall any requests by bidders for consultation with parties other than participating bidders.



## Schedule A

### Calculation of Additional Cash Purchase Price Required to Result in Equivalent Unsecured Distribution Under QSI Bid Terms Assuming Wacker Limited Liability Otherwise Reduces Claims Against BSI

<b>Claims</b>	<b>\$M</b>
Estimated Non-indemnified Claims	22
Estimated Inter-company Claim	123
	<hr/>
	145
25% of Estimated Indemnified Liabilities	5
<b>Total Claims Under Wacker</b>	<b>150</b> A
75% of Estimated Indemnified Liabilities	18
<b>Total Claims Under QSI</b>	<b>168</b> B
	<hr/> <hr/>
<b>Available for Distribution to Unsecureds</b>	<b>\$M</b>
Total Cash Purchase Price of Portion Bids	34.3
Cash at closing	0.7
Total Cash Available	<hr/> 35.0
DIP / KERP charges	<hr/> (4.5)
	30.5
IQ Secured Claim	<hr/> (28.5)
Cash Available for Unsecureds	<hr/> <hr/> 2.0
	<hr/> <hr/>
Unsecured Distribution under Wacker (C/A)	0.013333333 D
Amount required for equal Unsecured Distribution under QSI (D x B)	2.24 E
Incremental Cash Purchase Price for Equivalency (E-C)	\$240,000

Note - All amounts estimated.

Formatting may be different from presentation on whiteboard during Auction

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# Appendix B

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**Black-line of Wacker APA vs. QSI APA**

## AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (this “**Agreement**”) is made and entered into as of this 25<sup>24</sup><sup>th</sup> day of April, 2012, between BECANCOUR SILICON INC., a corporation subject to the *Business Corporations Act* (Québec) (“**BSI**”), TIMMINCO LIMITED, a corporation incorporated under the *Canada Business Corporations Act* (“**Timminco**” and together with BSI, the “**Vendors**”), ~~QSI PARTNERS LTD. and WACKER CHEMIE AG~~, a corporation incorporated under the laws of ~~the Cayman Islands~~ Germany (the “**Purchaser**”) and ~~GLOBE SPECIALTY METALS, INC., a corporation incorporated under the laws of Delaware~~ (and/or the “**Guarantor**”):

### RECITALS:

- (A) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 3, 2012 (as amended and as may be further amended or restated from time to time, the “**Initial Order**”), the Vendors are subject to proceedings (the “**CCA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCA**”);
- ~~(B) — On March 1, 2012, the Vendors, the Purchaser, and the Guarantor entered into that certain Agreement of Purchase and Sale, for the purchase and sale of certain of the Vendors’ assets (the “**Stalking Horse Agreement**”) so as to set a minimum floor price in respect of the Vendors’ sales process;~~
- (B) ~~(C)~~ Pursuant to ~~an~~ a further order of the Court dated March 9, 2012 (as amended or restated from time to time, the “**Bidding Procedures Order**”), the Court, *inter alia*, approved ~~(i)~~ certain bidding procedures, attached as Schedule “A” thereto, for the solicitation of offers or proposals for the acquisition of the Vendors’ property, assets and undertaking, or some portion thereof (the “**Bidding Procedures**”) ~~superior to that contemplated under the Stalking Horse Agreement, and (ii) an Expense Reimbursement payable to the Purchaser in accordance with Section 7.2 of the Stalking Horse Agreement; and;~~
- (C) ~~(D)~~ The Vendors desire to sell certain of their assets and the Purchaser has agreed, subject to the selection of this Agreement as the Successful Bid or Back-Up Bid in accordance with the Bidding Procedures, to purchase certain assets of the Vendors, subject to the terms and conditions set forth in this Agreement and in accordance with section 36 and other provisions of the CCA and the Bidding Procedures Order;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendors, the Purchaser and the Guarantor agree as follows:

## SECTION 1 INTERPRETATION

### 1.2 ~~1.1~~ Definitions

In this Agreement:

- (a) “**Affiliate**” has the meaning ascribed to that term under National Instrument 45-106 - Prospectus and Registration Exemptions of the Canadian Securities Administrators;
- (b) “**Agreement**” has the meaning set out in the recitals hereto;
- (c) ~~“**Antitrust Clearances**” means any approvals or clearances required to be obtained from a Governmental Authority in the jurisdictions in which the Purchaser, following consultation with the Vendors, has determined, acting reasonably, that a filing is required under any applicable antitrust, competition or similar Applicable Law in order to consummate the transactions contemplated by this Agreement and/or the expiry, termination or waiver of any waiting periods in the jurisdictions in which the Purchaser, following consultation with the Vendors, has determined, acting reasonably, that a filing is required under any applicable antitrust, competition or similar Applicable Law required in order to consummate the transactions contemplated by this Agreement;~~
- (d) ~~(e)~~ “**Applicable Law**” means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event;
- (e) ~~(d)~~ “**Approval and Vesting Order**” means an order by the Court approving this Agreement, authorizing the Transaction and vesting in the Purchaser all the right, title and interest of the Vendors in and to the Purchased Assets free and clear of all Encumbrances, other than Permitted Encumbrances, in form and substance acceptable to the Parties, acting reasonably;
- (f) ~~(e)~~ “**Assignment and Assumption Agreement**” means an agreement to be entered into between the Purchaser and the Vendors to be effective as of the Closing Time wherein the Vendors shall assign the Contracts to the Purchaser and the Purchaser shall thereafter assume the Assumed Obligations;
- (g) ~~(f)~~ “**Assignment Order**” means an order or orders of the Court pursuant to Section 11.3 and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchaser, acting reasonably, (i) authorizing

and approving the assignment of any Contract for which a Consent and Approval has not been obtained (including the DCC Consent) and preventing any counterparty to the Contract from exercising any right or remedy under the Contract by reason of any defaults arising from the CCAA Proceedings or the insolvency of the Vendors and (ii) where no DCC Consent has been obtained, the vesting in the Purchaser of all right, title and interest of BSI in and to the QSLP Equity and the QSLP Contracts free and clear of any rights or remedies of DCC arising under any QSLP Contract in connection with (A) the transfer of the QSLP Equity or such QSLP Contract contemplated hereunder, (B) the Vendors' insolvency or CCAA Proceedings, or (C) any pre-Closing breach of contract;

- (h) ~~(g)~~ “**Assumed Obligations**” has the meaning set out in Section 2.4(a);
- (i) ~~(h)~~ “**Auction**” has the meaning set out in the Bidding Procedures;
- (j) ~~(i)~~ “**Back-Up Bid**” has the meaning set out in the Bidding Procedures;
- (k) ~~(j)~~ “**Benefit Plans**” means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of each Vendor with respect to some or all of the Employees and which provide for or relate to:

  - (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or
  - (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and perquisites or similar employment benefits;
- (l) ~~(k)~~ “**Bidding Procedures**” has the meaning set out in the recitals hereto;
- (m) ~~(l)~~ “**Bidding Procedures Order**” has the meaning set out in the recitals hereto;
- (n) ~~(m)~~ “**Books and Records**” means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of, either

~~Vendors~~Vendor, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets;

- (o) ~~(n)~~ **“BSI ~~Owned~~Leased Real Property”** means the leased real property referred to under the heading **“~~Owned~~Leased Property”** in Schedule “B”, which for greater certainty shall not include any personal property located therein;
- (p) **“BSI Owned Property”** means the real property referred to under the heading “Owned Property” in Schedule “B”, which for greater certainty shall not include any personal property located therein;
- (q) ~~(o)~~ **“BSI Working Capital”** means the Silicon Metals Accounts Receivable, inventory and prepaid expenses of BSI set out in Schedule “L”;
- (r) ~~(p)~~ **“Business Day”** means a day on which banks are open for business in Toronto, Montreal and New York but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario, or the Province of Québec or the State of New York;
- (s) **“Business Transfer Agreement”** means the Business Transfer Agreement dated September 30, 2010 among BSI and QSLP, by its general partner, QSGP;
- (t) ~~(q)~~ **“C\$” and “\$”** means the lawful currency of Canada;
- (u) ~~(r)~~ **“CCAA”** has the meaning set out in the recitals hereto;
- (v) ~~(s)~~ **“CCAA Proceedings”** has the meaning set out in the recitals hereto;
- (w) ~~(t)~~ **“Claims”** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person;
- (x) ~~(u)~~ **“Closing”** means the successful completion of the Transaction;
- (y) ~~(v)~~ **“Closing Cash Payment”** has the meaning set out in Section 3.23.3;
- (z) ~~(w)~~ **“Closing Cash Purchase Price”** has the meaning set out in Section 3.23.3;

- (aa) ~~(x)~~ “Closing Date” means the ~~fifth~~ ~~(5th)~~ later of (i) two (2) Business Days following the twenty-second (22<sup>nd</sup>) day after the date on which the Approval and Vesting Order is granted ~~or~~, (ii) two (2) Business Days following the satisfaction or waiver of all conditions to Closing other than the payment of the Closing Cash Payment which shall be paid on the Closing Date, or (iii) such other date as agreed to in writing by the Parties;
- (bb) ~~(y)~~ “Closing Date Draft Statement of QSLP Working Capital” has the meaning set out in Section ~~3.9.3.10~~(a);
- (cc) ~~(z)~~ “Closing Date Statement of QSLP Working Capital” has the meaning set out in Sections ~~3.9.3.10~~(d) and ~~3.9.3.10~~(e);
- (dd) ~~(aa)~~ “Closing Time” means 2:00 p.m. (Toronto time) on the Closing Date;
- (ee) ~~(bb)~~ “Collective Agreements” means all collective bargaining or similar agreements with any type of Employee representative applying or relating to any Employee of either of the Vendors, including the Convention Collective de Travail (the “BSI Collective Agreement”) between BSI, QSLP and La Section Locale 184 du Syndicat Canadien des Communications, de l’Énergie et du Papier dated February 28, 2011 relating to BSI’s hourly employees;
- (ff) ~~(cc)~~ “Competition Act” means the *Competition Act* (Canada) as amended, and includes the regulations promulgated thereunder;
- (gg) ~~(dd)~~ “Consents and Approvals” means the consents, approvals, notifications or waivers from, and filings with, third parties (including any Governmental Authority) as may be required to complete the Transaction (including without limitation the Antitrust Clearances), in form and substance (including without limitation the quantum of the Consent Costs) satisfactory to the Purchaser, acting reasonably, as set forth in Schedule “K”, and which are effective as of the Closing Time;
- (hh) ~~(ee)~~ “Consent Cost” has the meaning set out in Section ~~1.1~~~~(ii)~~1.2(kk), for greater certainty and without limitation, Consent Costs do not include any amounts owing to or incurred by the Monitor or its or the Vendors’ advisors;
- (ii) ~~(ff)~~ “Contracts” means all of the contracts and other written agreements to which the Vendors or either one of them are parties constituting part of the Purchased Assets;
- (jj) ~~(gg)~~ “Court” has the meaning set forth in the recitals hereto;
- (kk) ~~(hh)~~ “Cure Costs” means collectively, (i) the amounts, if any, that are required to be paid under section 11.3 of the CCAA to cure any monetary defaults in connection with the assignment of the Contracts to the

Purchaser under section 11.3 of the CCAA; and (ii) such other reasonable costs required to obtain any Consent and Approval (such reasonable costs required to obtain any Consent and Approval, the “Consent Cost”);

- (ll) ~~(ii)~~—“DCC” means any one or more of Dow Corning Canada, Inc., DC Global Holdings S.a.r.l. (formerly Dow Corning Netherlands, B.V.), Dow Corning Corporation or their Affiliates as applicable;
- (mm) ~~(jj)~~—“DCC Consent” means the consent to the transfer to the Purchaser (or its permitted assigns in accordance with Section ~~9.118.11~~) hereunder of the QSLP Equity and of all of the Contracts to which DCC is a party ~~hereunder~~, and waiver by DCC of any and all rights it has or will become entitled to under any QSLP Contract due to (i) the transfer of the QSLP Equity hereunder, or (ii) the Vendors’ insolvency or CCAA Proceedings, or (iii) any pre-Closing breach of ~~contracts~~contract, such consent and waiver to be in form and substance satisfactory to the Purchaser, acting reasonably;
- (nn) ~~(kk)~~—“Deposit” has the meaning set forth in Section ~~3.33.4~~;
- ~~(ll)~~—“DIP Amendment” means the amendment dated March 1, 2012 to the DIP agreement dated January 18, 2012 between the Vendors and the DIP Lender pursuant to which the parties thereto agreed, *inter alia*, that if either (i) the Closing takes place, or (ii) the Closing does not occur solely as a result of the failure by the Purchaser to perform any of its obligations under the Stalking Horse Agreement or hereunder, then the outstanding DIP Obligations (as defined in the DIP Amendment) owing by the Vendors under the DIP Facility and the obligation of the Monitor to return the remaining balance, if any, of the Maximum Amount (as defined in the DIP Amendment) (and interest earned thereon) to the Purchaser on the Maturity Date (as defined therein) shall be reduced by an aggregate amount equal to the Deposit;
- (oo) ~~(mm)~~—“DIP Facility” means the super-priority credit facility provided to the Vendors by ~~the Purchaser~~QSI Partners Ltd. pursuant to the DIP ~~agreement~~Agreement dated January 18, 2012 between the Vendors and the DIP Lender (as may be amended), and approved by the DIP Order;
- ~~(nn)~~—“DIP Lender” means QSI Partners Ltd., in its capacity as lender under the DIP Facility;
- ~~(oo)~~—“DIP Lender’s Charge” has the meaning set out in the DIP Order;
- ~~(pp)~~—“DIP Order” means the Order of the Court dated February 8, 2012, authorizing the DIP Facility, as amended from time to time; as amended from time to time;



- (pp) ~~(qq)~~ “**Disclosure Letter**” means the disclosure letter executed by the Vendors and delivered to the ~~Purchaser~~ Stalking Horse Bidder prior to the execution of the Stalking Horse Agreement (as defined in the Bidding Procedures Order);
- (qq) ~~(rr)~~ “**Draft Statement of BSI Working Capital**” has the meaning set forth in Section ~~3.63.7~~ 3.63.7(a);
- (rr) ~~(ss)~~ “**Employee**” means an individual who is, or previously was, employed or retained by either Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave;
- (ss) ~~(tt)~~ “**Encumbrances**” means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease);
- (tt) ~~(uu)~~ “**Estimated BSI Working Capital Statement**” means the forecasted working capital balances set forth in Schedule “L”;
- (uu) ~~(vv)~~ “**Excise Tax Act**” means the *Excise Tax Act* (Canada), as amended;
- (vv) ~~(ww)~~ “**Excluded Assets**” means any and all properties, rights, assets and undertakings of the Vendors that do not constitute the Purchased Assets;
- (ww) ~~(xx)~~ “**Excluded Equipment**” means any equipment or machinery and any parts and components thereof, that are Excluded Assets;
- (xx) ~~(yy)~~ “**Expense Reimbursement**” ~~has the meaning set forth in Section 7.2 of the Stalking Horse Agreement;~~ “**Framework Agreement**” means the Framework Agreement dated as of August 10, 2010 entered into by and among DCC, Timminco and BSI as amended by (i) a letter agreement dated March 31, 2011; and (ii) Amendment No. 1 dated November 1, 2011;
- (yy) ~~(zz)~~ “**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial, municipal; or supra-national; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation;
- (zz) ~~(aaa)~~ “**Guaranteed Obligations**” has the meaning set forth in Section ~~8.17.1~~ 8.17.1(a);

- (aaa) ~~(bbb)~~ “**HP2 Severance Transaction Documents**” means, collectively, (i) a deed of servitude by which QSGP shall establish by destination of proprietor, mutual and reciprocal real servitudes against and in favour of the property located at 6400 Yvon-Trudeau, Bécancour, Quebec (the “**HP2 Property**”) and the property located at 6500 Yvon-Trudeau, Bécancour, Quebec (the “**Facility**”), in order to address operational, maintenance, cost sharing, access and other related matters between the Facility and the HP2 Property, including servitudes for illegal views, optical fibres, internet, telephone lines and systems, parking, access to Yvon-Trudeau Street, passage, locker room, security, shared equipment, water, sewer, natural gas, electricity, fire safety systems and equipment, spur lines, shipping and receiving doors and/or compressed air; (ii) a deed of sale for a nominal amount of \$1 between BSI as vendor to QSGP, acting as general partner of QSLP, as purchaser, of dust collector No. 21 located on the HP2 Property and the related duct connecting Furnaces No. 2 located on the Facility; (iii) a deed of sale under which QSGP, the registered owner of the HP2 Property, shall transfer legal title to the HP2 Property to BSI, its current beneficial owner; and (iv) following the registration in the land register of the deeds referred to in above paragraphs (i) and (iii), a termination agreement of the nominee agreement concerning the HP2 Property entered into on September 30, 2010 between BSI, as owner, and QSGP, as nominee; in each case, in substantially the form provided by BSI to the ~~Purchaser~~ Stalking Horse Bidder under cover of letter dated March 1, 2012 or such other form agreed between the Vendors and the Purchaser, acting reasonably;
- (bbb) ~~(eee)~~ “**IFRS**” means the International Financial Reporting Standards, namely the standards, interpretations and the framework for the preparation and presentation of financial statements (in the absence of a standard or an interpretation) adopted by the International Accounting Standards Board (IASB), consistently applied;
- (ccc) ~~(ddd)~~ “**Income Tax Act**” means the *Income Tax Act* (Canada), as amended;
- (ddd) ~~(eee)~~ “**Initial Order**” has the meaning set out in the recitals hereto;
- (eee) ~~(fff)~~ “**Intellectual Property**” means, any interest in any and all intellectual and industrial property of any kind in any jurisdiction throughout the world, including: (i) all software, computer programs, layouts, interfaces, templates, applications and tools, and code of all types, including object and source code, and including ephemeral aspects, “look and feel”, graphic design and user interface design (“**Software**”); (ii) all information and data, databases, database layouts and data structures (whether or not subject to copyright protection) (“**Databases**”); (iii) all literary, graphical, pictorial, artistic, audio-visual and other works, including webpages and webpage designs, templates, scripts, and similar material, and all compilations of any of the foregoing (collectively, together with Software

and Databases, “Works”); (iv) all trade-marks, trade names, service marks, trade dress, logos and other marks and associated goodwill (“Marks”); (v) all domain names, patents, inventions, discoveries, arts, systems, methods, processes, machines, manufactures, developments and improvements (“Inventions”); (vi) all industrial designs; all formulae, confidential information, proprietary information, trade secrets and know how (“Know-How”); and (vii) any other works or other subject-matter that is subject to intellectual or industrial property protection under the laws of any jurisdiction throughout the world; in all cases of the foregoing whether or not registrable, registered or the subject of applications for registration, including Intellectual Property Rights;

(fff) ~~(ggg)~~ “**Intellectual Property Rights**” means: (i) any and all statutory, common law or other intellectual and industrial property rights and interests of any kind or nature in and to Intellectual Property, including all copyrights and other rights in and to Works, moral rights and benefits in all waivers of moral rights, patents, patent rights and other rights in and to Inventions, rights to Marks, rights and benefits in and to domain name registrations, industrial design and design patent rights, trade secret rights and other rights in and to Know-How, (ii) all registrations, pending applications for registration, and rights to file applications, and rights of priority, renewal, extensions, divisionals, continuations (in whole or in part) or other derivative applications and registrations, for any of the foregoing; (iii) all licenses or other contractual rights in and to any of the foregoing (including third party software licenses) and all licenses granted in respect of any of the foregoing Intellectual Property, rights and interests; (iv) all future income and proceeds from any of the foregoing Intellectual Property, rights, interests or licenses; and (v) all rights of enforcement and to obtain remedies, including to damages and profits, by reason of past, present or future infringement of any of the foregoing Intellectual Property, rights, interests or licenses;

(ggg) “Interim Financing” means interim financing to be provided by the Purchaser to the Vendors on a secured basis, which security shall be subject only to the Administration Charge (as defined in the Initial Order), the D&O Charge (as defined in the Initial Order), the KERP Charge (as defined in the Order granted in the CCAA Proceedings on January 16, 2012, as amended or restated from time to time) and the DIP Lenders’ Charge (as defined in the Order granted in the CCAA Proceedings on February 8, 2012, as amended or restated from time to time), and, to the extent applicable, on terms and conditions substantially equal to the terms and conditions of the DIP Facility; if Interim Financing is required, the Purchaser shall execute Interim Financing documentation in form and substance satisfactory to the Vendors, the Purchaser and the Monitor, acting reasonably, all as further detailed under Section 3.11 hereunder;

- (hhh) **“Investment Canada Act”** means *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), as amended;
- (iii) **“Litigation Claims”** means, collectively, (i) any and all rights of actions or claims whatsoever of either Vendor against third parties arising by reason of any facts or circumstances that occurred or existed before the Closing but excluding any such rights of actions or claims of either Vendor against counterparties to any Contract, and (ii) all amounts owing or received in respect of any such rights of actions or claims;
- (jjj) **“Material Adverse Change”** means any one or more changes, effects, events or occurrences that, individually or in the aggregate:
- (ia) is, or would reasonably be expected to be, material and adverse to the business, properties, assets, liabilities (contingent or otherwise), condition (financial or otherwise), capitalization, operations or results of operations of QSLP and the Purchased Assets, taken as a whole; or
  - (iib) prevents or materially delays or would reasonably be expected to prevent or materially delay the Vendors from consummating the Transaction;
- other than, in the case of clause (a) or (b), any change, effect, event or occurrence (i) in or relating to the CCAA Proceedings, (ii) in or relating to general political, economic or financial conditions in Canada, or (iii) in or relating to the industry involving the mining, processing and sale of silicon, in general, and which in the case of paragraph (i), (ii) and (iii) does not have a materially disproportionate effect on QSLP and the Purchased Assets, taken as a whole;
- (kkk) **“Monitor”** means FTI Consulting Canada Inc. in its capacity as Monitor of the Vendors in the CCAA Proceedings;
- (lll) **“Monitor’s Certificate”** means the certificate to be filed with the Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Closing Cash Purchase Price;
- (mmm) **“Ordinary Course of Business”** means the ordinary course of business of the Vendors with respect to the Purchased Assets consistent with the conduct of such business on the date hereof and consistent with the Orders of the Court in the CCAA Proceedings;
- (nnn) **“Output and Supply Agreement”** means the output and supply agreement among QSLP, BSI and DCC dated October 1, 2010, as amended;

- (ooo) **“Parties”** means, collectively, the Purchaser, the Guarantor and each of the Vendors, and **“Party”** means any one of them;
- (ppp) **“Pension Plans”** means any registered or unregistered pension plans of or sponsored by the Vendors, including the following: (i) the Retirement Pension Plan for the Hourly Employees of Timminco Metals, a Division of Timminco, at the Haley Plant (Ontario Registration Number 0589648), (ii) the Régime de Rentes pour les Employés Non Syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042), (iii) the Régime de Rentes pour les Employés Syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) and (iv) the Pension Plan for the Timminco Salaried Employees (Ontario Registration Number 1039312);
- (qqq) **“Permitted Encumbrances”** means only those Encumbrances related to the Purchased Assets listed on Schedule “E” hereto, which the Purchaser, in connection with the Approval and Vesting Order, shall be entitled to seek to further limit or narrow; provided that, any refusal by the Court to grant the Approval and Vesting Order in respect of any such further limited or narrowed list of Permitted Encumbrances shall not constitute a failure to satisfy the condition in Section 5.3([eb](#)) hereof so long as the Court grants the Approval and Vesting Order in respect of the Permitted Encumbrances listed on Schedule “E” hereto;
- (rrr) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, governmental authority or other entity however designated or constituted;
- (sss) **“Post-Filing Costs”** means any amounts owing or incurred and not paid under the Contracts arising from and after the commencement of the CCAA Proceedings to but excluding the Closing Date ~~that are permitted to be paid pursuant to the Initial Order;~~
- (ttt) **“Post-Retirement Liabilities”** mean: (i) with respect to Employees whose employment is or was governed by a Collective Agreement (including retirees), all liabilities and obligations for the post-retirement benefits provided under the Collective Agreements or under Benefit Plans; and (ii) with respect to non-unionized Employees (including retirees), all liabilities and obligations for the post-retirement benefits provided under the Benefit Plans, as applicable;
- (uuu) **“Purchase Price”** has the meaning set out in Section 3.1;
- (vvv) **“Purchased Assets”** means, collectively, [and subject to Section 2.1, \(i\) the Purchased Silicon Metal Assets, \(ii\) the BSI Owned Property, and the Purchased Solar Grade Silicon Assets;](#) ~~(iii) the BSI Leased Real Property;~~

- (www) **“Purchased Silicon Metal Assets”** means all of BSI’s right, title and interest, in and to those assets and rights set forth in Schedule “A” including the following: the QSLP Equity, the QSLP Contracts, the Silicon Metal Contracts and the ancillary assets and other property set forth in Schedule “A”;
- (xxx) **“QSGP”** means Québec Silicon General Partner Inc., a corporation formed under the laws of Québec, and its successors and assigns;
- (yy) **“QSLP”** means Québec Silicon Limited Partnership, a limited partnership formed under the laws of Québec, and its successors and assigns;
- (zzz) **“QSLP Contracts”** means the Contracts relating to the formation, transfer of assets into, and governance of, QSLP set forth in Schedule “F”; provided that the Framework Agreement and the Business Transfer Agreement shall only be included in the term “QSLP Contracts” if DCC provides written confirmation to the Purchaser, on or before the Closing Date, that neither the Purchaser nor the Guarantor are or shall be held liable under or in connection with Section 9.1 of the Framework Agreement. For the avoidance of doubt, the Purchaser shall assume all obligations arising under the QSLP Contracts on or after the Closing Date, but with respect to the obligations under Section 6.7(f) of the Framework Agreement if and to the extent that the Framework Agreement shall be included in the term QSLP Contracts in accordance with the terms of this Agreement, 75% of such obligations under Section 6.7(f) of the Framework Agreement;
- (aaaa) **“QSLP Current Assets”** means, at any date, all current assets of QSLP, determined on a consolidated basis as of such date in accordance with IFRS (including, for greater certainty, cash, cash equivalents and all other current assets set forth in Schedule “M”), plus the aggregate amount of capital expenditures or other expenditures made from the date of this Agreement to such date on account of loss or damage to assets of QSLP or interruption of business of QSLP but only to the extent such amounts are recoverable under insurance policies of QSLP but not yet received by QSLP, and provided however that any such add back of any such capital expenditures or other expenditures will (i) be subject to providing the Purchaser with evidence satisfactory to it, acting reasonably, that such loss or damage is insured and such amounts will be recovered under such insurance policies and (ii) will not be included if the insurance proceeds are otherwise included as a current asset under IFRS. For greater certainty, the parties agree that the total of QSLP Current Assets as of end of January 2012 amounted to C\$ 34.649 million as reflected on Schedule “M”;
- (bbbb) **“QSLP Current Liabilities”** means, at any time, all current liabilities of QSLP, determined on a consolidated basis as of such time in accordance



with IFRS (including, for greater certainty, all financial debt (including but not limited to any line of credit from the shareholders of QSLP) and all current liabilities set forth in Schedule "M"). For greater certainty, the parties agree that the total of QSLP Current Liabilities as of end of January 2012 amounted to C\$28.373 million as reflected on Schedule "M";

- (cccc) "**QSLP Equity**" means, collectively, 51,000 units in the capital of QSLP and 51 Class A Shares in the capital of QSGP, in each case, registered in the name of BSI;
- (dddd) "**QSLP Mineral Rights**" means the Mining Lease BM674 issued by the Ministry of Natural Resources and Wildlife to BSI (then called Électro-métallurgie S.K.W. Canada ltée) on January 13, 1976, as renewed, extended and amended;
- (eeee) "**QSLP Real Property**" means the real property municipally known as 6500 Yvon-Trudeau Street, Bécancour, Québec, known and designated as being lot number 4 702 498 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2);
- (ffff) "**QSLP Working Capital**" means as at any date the amount of the QSLP Current Assets minus the QSLP Current Liabilities in each case as of such date;
- (gggg) "**Representative**" means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates;
- (hhhh) "**Sales Tax**" means all taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* and *An Act Respecting the Québec Sales Tax* (Québec) and the regulations made thereunder and "**Sales Tax Legislation**" means all such acts and regulations;
- (iiii) "**Sample QSLP Working Capital Statement**" means the sample QSLP working capital statement set forth in Schedule "M";
- (jjjj) "**Shortfall**" means ~~that certain amount~~ 5,440 metric tons of silicon metal to be sold by QSLP to DCC on a monthly basis from January 1, 2011 to December 31, 2012, in order to replace that certain amount of silicon metal that was part of the QSLP production allocation that DCC was entitled to receive but was instead sold to by QSLP to BSI pursuant to Section 2.2(b) of the Output and Supply Agreement;
- (kkkk) "**Silicon Metal Accounts Receivable**" means all accounts receivable (net of doubtful accounts) owing to BSI in respect of the silicon metals business of BSI except for (i) any tax refunds or credits or (ii) any Litigation Claims;

- (llll) **“Silicon Metal Contracts”** means the Contracts relating solely to the Purchased Silicon Metal Assets set forth in Schedule “G”;
- (mmmm) **“Specific Conveyances”** means all conveyances, deeds of transfer, share transfers, bills of sale, assignments and transfers that are reasonably required to transfer the Purchased Assets to the Purchaser in customary form consistent with Section 2.2;
- (nnnn) **“Stalking Horse Agreement Bidder”** has the meaning set out forth in the ~~recitals hereto~~ Bidding Procedures Order;
- (oooo) **“Statement of BSI Working Capital”** has the meaning set forth in Section ~~3.63.7~~(d) or ~~3.63.7~~(e), as applicable;
- ~~(pppp) **“Subsequent DIP Amendment”** has the meaning set forth in Section 3.10;~~
- (pppp) ~~(qqqq)~~ **“Successful Bid”** has the meaning set out in the Bidding Procedures;
- (qqqq) ~~(rrrr)~~ **“Successful Bidder”** has the meaning set out in the Bidding Procedures;
- (rrrr) ~~(ssss)~~ **“Termination Date”** means July 1, 2012 or, in the event the Agreement is the Back Up Bid, 60 days from the date the Purchaser receives written notice that the Purchaser is the Successful Bidder in accordance with Section ~~3.33.4~~ hereof;
- ~~(tttt) **“Threshold Amount”** has the meaning set out in Section 5.1(f);~~
- (ssss) ~~(uuuu)~~ **“Transaction”** means the transaction of purchase and sale contemplated by this Agreement;
- (tttt) ~~(vvvv)~~ **“Transfer Taxes”** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Tax but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation; ~~and~~
- (uuuu) ~~(wwww)~~ **“Vendors”** has the meaning set out in the recitals hereto; and
- (vvvv) **“Wacker Contract”** means the Long-Term Supply Agreement dated June 1, 2011, and effective January 1, 2011 between BSI and the Guarantor, as amended from time to time.



**1.3 ~~1.2~~ Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement.

**1.4 ~~1.3~~ Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

**1.5 ~~1.4~~ Schedules**

The following Schedules are incorporated in and form part of this Agreement:

Schedule “A”	-	Purchased Silicon Metal Assets
Schedule “B”	-	<del>Intentionally Deleted</del> <a href="#">Real Property</a>
Schedule “C”	-	Intentionally Deleted
Schedule “D”	-	<del>Bidding Procedures Order</del> <a href="#">Intentionally Deleted</a>
Schedule “E”	-	Permitted Encumbrances
Schedule “F”	-	QSLP Contracts
Schedule “G”	-	Silicon Metal Contracts
Schedule “H”	-	Intentionally Deleted
Schedule “I”	--	Monthly Reimbursement
Schedule “J”	-	Intentionally Deleted
Schedule “K”	-	Consents and Approvals
Schedule “L”	-	Estimated BSI Working Capital Statement
Schedule “M”	=	Sample QSLP Working Capital Statement
Schedule “N”	=	Access Agreement Term Sheet

**SECTION 2  
SALE AND PURCHASE AND ASSIGNMENT**

**2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, at the Closing Time, the Vendors hereby agree to sell, assign and transfer to the Purchaser and the Purchaser hereby agrees to purchase from the Vendors, all of the Vendors’ right, title and interest in and to the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances. The Vendors may, in their sole discretion, by notice to the Purchaser on or prior to the date of the Auction, elect to exclude either the BSI Owned Property or the BSI Leased Real Property or both from the Purchased Assets, in which case reference herein to “Purchased

Assets” shall be deemed not to include the BSI Owned Property and/or the BSI Leased Real Property, as the case may be.

## **2.2 Assignment of Purchased Assets**

Subject to the conditions and terms hereof, at the Closing Time, the Vendors shall assign to the Purchaser all of the Vendors’ rights, benefits and interests in and to the Contracts and the Purchaser shall assume the obligations and liabilities of the Vendors under the Contracts at the Closing Time (including Cure Costs but excluding Post-Filing Costs). Notwithstanding the foregoing, this Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Purchased Asset contemplated to be assigned to the Purchaser under this Agreement that is not assignable without the Consent and Approval of a third party unless (i) such Consent and Approval has been obtained or (ii) the assignment has been ordered by the Court.

Prior to the application for the Approval and Vesting Order, the Vendors shall use their commercially reasonable efforts to obtain any Consent and Approval necessary for the assignment of any Contract to the Purchaser, including the DCC Consent. The Purchaser shall provide its reasonable cooperation to assist the Vendors in obtaining any such Consents and Approvals.

To the extent any Consent and Approval, including the DCC Consent, necessary for the assignment of any Contract to the Purchaser is not obtained prior to the application for the Approval and Vesting Order, the Vendors shall bring an application to the Court for approval of the Assignment Order.

## **2.3 “As is, Where is”**

The Purchaser acknowledges that the Vendors are selling the Purchased Assets on an “as is, where is” basis as they shall exist at the Closing Time. Except as otherwise provided in Section 4.2(c) and 4.2(d), the Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendors do not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendors to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario), as amended, the Civil Code of Québec or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 4.2, no representation, warranty or condition has or will be given by the Vendors concerning completeness or accuracy of such descriptions.

## **2.4 Assumed Obligations**

(a) The Purchaser shall assume and perform, discharge and pay when due the debts, liabilities and obligations under the Contracts (to the extent assigned or transferred

to the Purchaser on Closing) ~~for the period from and after~~ incurred as of the Closing Time but which are not due and payable as of the Closing Time and all Cure Costs (other than Post-Filing Costs) of the Vendors (the “Assumed Obligations”) after the Closing. Notwithstanding anything to the contrary contained herein, in no event shall the Purchaser's obligations to pay Cure Costs hereunder exceed a maximum aggregate amount of C\$10,000,000. For the avoidance of doubt, if and to the extent the Framework Agreement shall be included in the QSLP Contracts, the Purchaser shall fully assume the obligations of BSI set out under section 6.7 (f) thereof, and the maximum aggregate amount of C\$10,000,000 as set out in this section 2.4 shall not apply to such obligations.

(b) The Purchaser assumes and undertakes to indemnify DCC and/or QSLP, without set-off or counterclaim, for 75% of the aggregate amount which they collectively are held liable under (a) the Régime de Rentes pour les Employés Syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) (the “BSI Union Pension Plan”) and (b) the Benefit Plans relating to BSI hourly retirees under the BSI Collective Agreement (the “BSI Union Benefit Plans”), subject to the following conditions:

(i) DCC provides the DCC Consent;

(ii) DCC provides written confirmation to the Purchaser, on or before the Closing Date, that neither the Purchaser nor the Guarantor are or shall be held liable under or in connection with Section 9.1 of the Framework Agreement;

(iii) DCC indemnifies QSLP and the Purchaser, without set-off or counterclaim, for the remaining 25% of such amounts if QSLP or the Purchaser are held liable in respect of the BSI Union Pension Plan or the BSI Union Benefit Plans; and

(iv) the Purchaser hereby waives any rights of subrogation acquired by it by reason of payment of any indemnification obligations to DCC or QSLP under this Section 2.4(b) or section 6.7(f) of the Framework Agreement.

## 2.5 Excluded Obligations

Other than the Assumed Obligations, and all the obligations to be assumed ~~pursuant to~~ pursuant to Sections ~~3.53.6~~ and ~~6.116.5~~, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendors (to any Person, including without limitation QSLP), including, without limiting the generality of the foregoing:

(a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Collective Agreements, Employees, Pension Plans, Post-Retirement Liabilities or any Excluded Asset;

- (b) all debts, liabilities and obligations related to any Purchased Asset (including Contracts but excluding Cure Costs) arising out of or related to the period prior to the Closing Time;
- (c) all obligations and liabilities owing by either Vendor to the other Vendor or any Affiliate thereof (for greater certainty other than Cure Costs excluding Post-Filing Costs);
- (d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser pursuant to Sections 2.4 and ~~3.53.6~~;
- (e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes);
- (f) all debts, liabilities and obligations of the Vendors arising under this Agreement; and
- (g) any debts, liabilities, obligations or Claims (other than Claims under any QSLP Contracts) by any person, including without limitation QSLP, against the Vendors relating to amounts payable to, or in respect of, BSI's hourly retirees under the Collective Agreements or under the Benefit Plans.

## 2.6 Termination of Wacker Contract

Subject to the terms and conditions hereof, effective as of the Closing Time the following shall be and are hereby deemed to have occurred without the necessity of any further act or formality:

- (a) the Wacker Contract shall be terminated;
- (b) BSI, for and on behalf of itself and its subsidiary, affiliated, and associated corporations and entities and all of their respective successors and assigns (collectively, the "BSI Releasers"), shall forever release and discharge the Guarantor and its subsidiary, affiliated, and associated corporations and entities and all of their respective officers, directors, servants, agents, employees, successors and assigns (collectively, the "Guarantor Releasees") from any and all Claims, whether known or unknown, which the BSI Releasers now have, ever had or may hereafter have against the Guarantor Releasees by reason of any cause, matter or thing whatsoever existing at the date hereof in connection with the Wacker Contract; and
- (c) the Guarantor, for and on behalf of itself and its subsidiary, affiliated, and associated corporations and entities and all of their respective successors and assigns (collectively, the "Guarantor Releasers"), shall forever release and discharge BSI and its subsidiary, affiliated, and associated

corporations and entities and all of their respective officers, directors, servants, agents, employees, successors and assigns (collectively, the “BSI Releasees”) from any and all Claims, whether known or unknown, which the Guarantor Releasees now have, ever had or may hereafter have against the BSI Releasees by reason of any cause, matter or thing whatsoever existing at the date hereof in connection with the Wacker Contract.

## 2.7 Framework Agreement

On or before the granting of the Approval and Vesting Order and the Assignment Order, either (i) the Purchaser shall receive written confirmation from DCC in form and substance acceptable to the Purchaser that neither the Purchaser nor the Guarantor is or shall be held liable under or in connection with Section 9.1 of the Framework Agreement or (ii) the Framework Agreement and the Business Transfer Agreement shall be deemed hereby to be excluded from the Purchased Assets (including without limitation the Purchased Silicon Metal Assets, and the QSLP Contracts), without any adjustment to the Purchase Price.

## **SECTION 3** **PURCHASE PRICE AND INTERIM FINANCING**

### **3.1 Purchase Price**

The aggregate purchase price (the “**Purchase Price**”) payable by the Purchaser to the Vendors for the Purchased Assets is: (i) the sum of C\$~~31,875,000~~32,125,000 payable in cash plus ~~and~~ (ii) the assumption by the Purchaser of the Assumed Obligations, subject to the adjustment, if any, in accordance with Section ~~3.7~~3.8.

### 3.2 Adjustment to Purchase Price

Notwithstanding the foregoing, in the event the Vendors have made the election referred to in Section 2.1 to exclude either the BSI Owned Property or the BSI Leased Real Property or both from the Purchased Assets, the Purchase Price shall be reduced as follows:

- (a) by C\$1,000,000 if only the BSI Owned Property is excluded from the Purchased Assets;
- (b) by C\$25,000 if only the BSI Leased Real Property is excluded from the Purchased Assets; or
- (c) by C\$1,025,000 if both the BSI Owned Property and the BSI Leased Real Property are excluded from the Purchased Assets.

### 3.3 ~~3.2~~ Satisfaction of Purchase Price

Provided that all conditions of Closing have been satisfied or waived in accordance with Section 5, the Purchase Price shall be paid and satisfied on Closing as follows:

- (a) the crediting ~~and set off~~ of the Deposit ~~against outstanding~~ and any amounts owing ~~to the DIP Lender under the DIP Facility pursuant to the DIP Amendment and, if applicable, the Subsequent DIP Amendment~~ pursuant to any Interim Financing against the cash portion of the Purchase Price;
- ~~(b) the application of all outstanding amounts owing to the DIP Lender under the DIP Facility (including any accrued interest thereon and any expenses and other amounts owing thereunder) in excess of the Deposit to the Purchase Price;~~
- (b) ~~(e)~~ the balance of the cash portion of the Purchase Price (the “Closing Cash Payment” and together with the Deposit ~~and the amount referred to in clause (b) above~~, the “Closing Cash Purchase Price”) shall be paid on the Closing Date by wire transfer in immediately available funds payable to the Monitor pending further Order of the Court; and
- (c) ~~(d)~~ the assumption by the Purchaser of the Assumed Obligations.

Any adjustment required to be made to the Purchase Price in accordance with Section ~~3.7~~3.8 shall be satisfied by the payment of the appropriate amount by the Party owing such payment to the other Party entitled thereto in the manner and at the time contemplated therein.

### 3.4 ~~3.3~~ Deposit

Effective upon the execution of this Agreement by all of the Parties, the Purchaser shall provide to the Monitor, for and on behalf of the Vendors, a deposit (the “Deposit”) of 15% of the Closing Cash Purchase Price (excluding any adjustment contemplated under Section ~~3.7 less the amount of the Deposit provided in accordance with section 3.3 of the Stalking Horse Agreement (which amount for greater certainty shall form part of the Deposit hereunder), pursuant to the credit and set off arrangement contemplated under the DIP Amendment. 3.2 or Section 3.8)~~ 3.2 or Section 3.8) by way of wire transfer of immediately available funds to the account designated by the Monitor. If the Closing takes place, the Deposit shall be credited ~~and set off~~ against the ~~outstanding amounts owing to the DIP Lender under the DIP Facility pursuant to the DIP Amendment. The Deposit shall be credited and set off against outstanding amounts owing to the DIP Lender under the DIP Facility pursuant to the DIP Amendment in the event that Closing does not occur solely as a result of the failure by the Purchaser to perform any of its obligations hereunder. For greater certainty, the Parties agree that the DIP Amendment shall apply to this Agreement. Notwithstanding any provision herein, there will be no credit or set off of the amount of the Deposit to outstanding amounts owing to the DIP Lender under the DIP Facility on the Business Day~~ Purchase Price. The Monitor shall return the Deposit to the Purchaser by no later than

two (2) Business Days following the occurrence of the earliest of any of the following (and the Vendors shall acknowledge the same in writing to the Purchaser):

- (a) if this Agreement is not the Successful Bid or the Back-Up Bid (as determined at the closing of the Auction pursuant to section 9(e) of the Bidding Procedures);
- (b) if this Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid of another purchaser is closed; or
- (c) if the Transaction is not completed by the Termination Date and either the Vendors or the Purchaser have terminated the Transaction thereafter for any other reason other than solely as a result of the failure of the Purchaser to perform any of its obligations hereunder.

If the Successful Bid does not close and this Agreement is the Back-Up Bid, the Vendors shall immediately provide written notice to the Purchaser of this fact pursuant to the Bidding Procedures. Upon receipt by the Purchaser of such notice ~~at least 5 Business Days prior to the Termination Date~~, the Purchaser shall be required to close the Transaction on the same terms set out herein or in the Purchaser's revised bid, as applicable, by no later than the Termination Date and the Deposit shall be credited ~~and set off~~ as provided in Section ~~3.2.3.3~~.

### 3.5 ~~3.4~~ Allocation of Purchase Price

The Purchase Price ~~shall be~~ is allocated among the Purchased Assets ~~by the Purchaser, acting reasonably, two Business Days prior to the Closing, a copy of which will be provided to the Vendors at such time. as follows and subject to any exclusions contemplated by Section 2.1: (i) the amount of C\$1,000,000 as purchase price for the BSI Owned Property; (ii) the amount of C\$25,000 for the BSI Leased Real Property; and (iii) the balance of the Purchase Price for the remaining Purchased Assets.~~ The Vendors and the Purchaser agree that the allocation of the Purchase Price for tax purposes among each of the classes of Purchased Assets of each of the Vendors shall be determined and agreed upon on a date no later than five (5) Business Days before the Closing Date. Each of the Vendors and the Purchaser shall report the sale and purchase of the Purchased Assets for all tax purposes in a manner consistent with such allocation, and will complete all tax returns, designations and elections in a manner consistent with such allocation and otherwise follow such allocation for all tax purposes on and subsequent to the Closing Date and may not take any position inconsistent with such allocation.

### 3.6 ~~3.5~~ Transfer and Other Taxes

The Parties agree that:

- (a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets or the registration of any Specific Conveyance necessitated hereby (including for



greater certainty all debts, liabilities and obligations of the Vendors for Transfer Taxes payable in connection with the ~~Transaction~~Transactions);

- (b) the Purchaser shall indemnify the Vendors for any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) for which the Vendors may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes;
- (c) if applicable, they shall jointly elect that no Sales Tax be payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Excise Tax Act and s. 75 of *An Act Respecting the Québec Sales Tax* (Québec), prepared by the Purchaser and made jointly by the Purchaser and each Vendor, in compliance with the requirements of the Sales Tax Legislation; and
- (d) the Purchaser shall perform, discharge and pay when due all debts, liabilities and obligations for realty taxes in respect of the Purchased Assets attributable to the period from and after the Closing Date.

### 3.7 ~~3.6~~ Preparation of BSI Working Capital Statement

- (a) Within 20 Business Days following the Closing Date (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing), the Purchaser will prepare and deliver to the Vendors and the Monitor a draft statement of BSI Working Capital (the “**Draft Statement of BSI Working Capital**”) prepared as of the Closing Date. The Draft Statement of BSI Working Capital will be prepared in accordance with IFRS consistent with the Estimated BSI Working Capital Statement referred to in Schedule “L”, provided that it is consistent with IFRS.
- (b) The Vendors will have 10 Business Days to review the Draft Statement of BSI Working Capital following receipt of it and the Vendors must notify the Purchaser in writing if they have any objections to the Draft Statement of BSI Working Capital within such 10 Business Day period. The notice of objection must contain a statement of the basis of the Vendors’ objections.
- (c) If the Vendors send a notice of objection of the Draft Statement of BSI Working Capital in accordance with Section ~~3.6~~3.7(b), the Parties will work expeditiously and in good faith in an attempt to resolve such objections following the date of notification by the Vendors to the Purchaser of such objections. Failing resolution of any objection to the Draft Statement of BSI Working Capital raised by the Vendors, within 90 days following the date of notification by the Vendors to the Purchaser of such objections, the Vendors or the Purchaser may bring a motion before the Court for a determination of such objections with respect to the Draft Statement of BSI Working Capital.



- (d) If the Vendors do not notify the Purchaser of any objection in accordance with Section ~~3.63.7~~(b), the Parties are deemed to have accepted and approved the Draft Statement of BSI Working Capital and such Draft Statement of BSI Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of BSI Working Capital will become the “**Statement of BSI Working Capital**” on the next Business Day following the end of such ~~510~~ Business Day period.
- (e) If the Vendors send a notice of objection within the ~~510~~ Business Day period, the Parties will revise the Draft Statement of BSI Working Capital to reflect the final resolution amongst the Vendors and the Purchaser or final determination by the Court of such objections under Section ~~3.63.7~~(c) within two Business Days following such final resolution amongst the Vendors and the Purchaser or determination by the Court, as applicable. Such revised Draft Statement of BSI Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of BSI Working Capital will become the “**Statement of BSI Working Capital**” on the next Business Day following revision of the Draft Statement of BSI Working Capital under this Section ~~3.63.7~~(e).
- (f) The Purchaser and the Vendors will each bear their own fees and expenses, in preparing or reviewing, as the case may be, the Draft Statement of BSI Working Capital.

### 3.8 ~~3.7~~ BSI Working Capital Purchase Price Adjustment

- (a) Subject to Section ~~3.73.8~~(c), the Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that the BSI Working Capital, as determined from the Statement of BSI Working Capital, is more or less than C\$4,509,000.
- (b) Subject to Section ~~3.73.8~~(c), if the BSI Working Capital, as determined from the Statement of BSI Working Capital, is more than C\$4,509,000, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Purchase Price. If the BSI Working Capital as determined from the Statement of BSI Working Capital is less than C\$4,509,000, the Vendors shall pay to the Purchaser the amount of the difference. Any amounts to be paid by the Purchaser to the Vendors, or by the Vendors to the Purchaser, under this Section will be paid within 2 Business Days after the Draft Statement of BSI Working Capital becomes the Statement of BSI Working Capital in accordance with Section ~~3.63.7~~(d) or Section ~~3.63.7~~(e), as the case may be.
- (c) If the adjustment arising from BSI Working Capital, as determined from the Statement of BSI Working Capital, would increase or decrease the

Purchase Price by an amount of less than C\$150,000, then there shall be no adjustment to the Purchase Price; provided, however that any such adjustment of C\$150,000 or more shall increase or decrease the Purchase Price, dollar for dollar, for the entire amount of the adjustment.

### 3.9 ~~3.8~~ Sufficiency of Funds

The Vendors will not distribute an amount of the Purchase Price equal to C\$4,509,000 (or, after preparation of the Draft Statement of BSI Working Capital, such lesser amount equal to the difference between C\$4,509,000 and the BSI Working Capital amount shown on the Draft Statement of BSI Working Capital) until the Statement of BSI Working Capital is determined in accordance with Section ~~3.6-3.7~~.

### 3.10 ~~3.9~~ Preparation of QSLP Working Capital Statement

- (a) Ten Business Days prior to the expected Closing Date (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing), the Vendors will prepare in good faith and deliver to the Purchaser and the Monitor a draft statement of QSLP Working Capital (the "**Closing Date Draft Statement of QSLP Working Capital**") as of the Closing Date (or such other date as mutually agreed by the Vendors and Purchaser in writing). The Closing Date Draft Statement of QSLP Working Capital will be prepared in accordance with IFRS and the Sample QSLP Working Capital Statement. For the avoidance of doubt, in the Sample QSLP Working Capital Statement, a provision against certain accounts receivable from BSI amounting to approximately C\$9,700,000 has been booked and considered as of January 2012 as set forth in Schedule "M". Such provisions in at least the same amount shall also be booked and considered when calculating the QSLP Current Assets as of the Closing Date notwithstanding a potential assumption by the Purchaser hereunder of the underlying obligation to make the respective payment to QSLP.
- (b) The Purchaser will have 510 Business Days to review the Closing Date Draft Statement of QSLP Working Capital following receipt of it and the Purchaser must notify the Vendors in writing if they have any objections to the Closing Date Draft Statement of QSLP Working Capital within such 210 Business Day period. The notice of objection must contain a statement of the basis of the Purchaser's objections.
- (c) If the Purchaser sends a notice of objection of the Closing Date Draft Statement of QSLP Working Capital in accordance with Section ~~3.9(b)~~3.10(b), within 90 days following the date of notification by the Vendors to the Purchaser of such objections, the Vendors or the Purchaser may bring a motion before the Court for a determination of such objections with respect to the Closing Date Draft Statement of QSLP Working Capital.

- (d) If the Purchaser does not notify the Vendors of any objection in accordance with Section ~~3.93.10~~(b), the Parties are deemed to have accepted and approved the Closing Date Draft Statement of QSLP Working Capital and such Closing Date Draft Statement of QSLP Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Closing Date Draft Statement of QSLP Working Capital will become the “**Closing Date Statement of QSLP Working Capital**” on the next Business Day following the end of such 210 Business Day period.
- (e) If the Purchaser sends a notice of objection within the 210 Business Day period, the Parties will revise the Closing Date Draft Statement of QSLP Working Capital to reflect the final resolution amongst the Vendors and the Purchaser or final determination by the Court of such objections under Section ~~3.93.10~~(c) within ~~two~~10 Business Days following such final resolution amongst the Vendors and the Purchaser or determination by the Court, as applicable. Such revised Closing Date Draft Statement of QSLP Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of QSLP Working Capital will become the “**Closing Date Statement of QSLP Working Capital**” on the next Business Day following revision of the Closing Date Draft Statement of QSLP Working Capital under this Section ~~3.9(e)~~3.10.
- (f) The Purchaser and the Vendors will each bear their own fees and expenses, in preparing or reviewing, as the case may be, the Closing Draft Statement of QSLP Working Capital.
- (g) The Vendors will provide the Purchaser full access to its Books and Records and other such information reasonably necessary for it to evaluate the Closing Date Draft Statement of QSLP Working Capital.

~~3.10~~ ————— ~~Extension and Increase of DIP Facility~~

3.11 Interim Financing

Provided that Closing is not delayed due to the failure of the Vendors to fulfill the conditions under sections 5.1 and 5.3 or any breach of the representations and warranties of the Vendors in section 4.2, the ~~DIP Facility shall be amended as follows (the “Subsequent DIP Amendment”)~~Purchaser shall provide Interim Financing to the Vendors on the following basis:

- (a) If the Purchaser is the Successful Bidder:
  - ~~(a) If the Purchaser is the Successful Bidder, i)~~ in the event Closing has not occurred by June 8, 2012, ~~by increasing the amount of the DIP Facility by~~ up to a maximum aggregate amount of \$2.5 million, and

(ii) in the event the Closing occurs after June 20, 2012, an additional amount sufficient to repay the DIP Facility; or

(b) If the Purchaser is the Back-Up Bidder, and thereafter becomes the Successful Bidder by receipt of notice by the Purchaser from the Vendors under the last paragraph of Section 3.4 hereof:

(i) up to a maximum aggregate amount of \$3 million from and after the date of receipt of such notice up to and including the Closing Date.

(ii) the Purchaser agrees to negotiate in good faith with the Vendors in connection with the potential provision of additional interim financing to take out and assume the DIP Facility.

For greater certainty, in the event that this Agreement is the Back-Up Bid and thereafter the Purchaser is the Successful Bidder, the Purchaser shall have no obligation to provide any Interim Financing except in accordance with this subsection 3.1(b)(i).

provided that in ~~(a) any of the cases (a) and (b)~~ above, the Vendors shall repay to the Purchaser any amounts owing pursuant to any ~~Subsequent DIP Amendment by~~ (i) Interim Financing (i) if Purchaser is the Successful Bidder or the Back-Up Bidder, and thereafter becomes the Successful Bidder, by crediting of such amount against the Purchase Price as set forth in section ~~3.23.3~~ (a) hereof on or before Closing, or (ii) if this Agreement is terminated for any reason, by payment into an account designated by the Purchaser, within two (2) Business Days of the earlier of the sale of the QSLP Equity or any real property and 30 days from the date of such termination.

## SECTION 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendors as of the date hereof and as of the Closing Time that and acknowledges that the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- (a) as at the Closing Time, the Purchaser ~~is~~will be a corporation duly incorporated, organized and subsisting under the laws of ~~the Cayman Islands and has~~Germany or, if the Purchaser is an Affiliate of the Guarantor, under the laws of its jurisdiction of incorporation, and will have the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- (b) as at the Closing Time, the Purchaser ~~has~~will have taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein

will not breach its constating documents, any agreement binding upon the Purchaser or any Applicable Laws with respect to the Purchaser;

- (c) other than ~~the Bidding Procedures Order~~, the Approval and Vesting Order, the Assignment Order (if applicable), the Antitrust Clearances and any Specific Conveyances, execution, delivery and performance of this Agreement by the Purchaser does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority;
- (d) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party ~~have been or~~ will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and ~~constitute or~~ will, as at the Closing Time, constitute legal, valid and binding obligations of the Purchaser enforceable in accordance with the terms hereof or thereof;
- (e) except in connection with the CCAA Proceedings and the Antitrust Clearances, there are no proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;
- (f) the Purchaser is not subject to any order of any Governmental Authority, nor are there any such orders threatened to be imposed by any Governmental Authority, which could affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;
- (g) the Purchaser has or will have made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price as set forth in Section ~~3.23.3~~3.23.3;
- (h) the Purchaser is controlled by a WTO Investor, within the meaning of the Investment Canada Act; and
- (i) the Purchaser and its affiliates do not have assets in Canada that exceed \$100 million or gross revenues from sales in, from or into Canada that exceed \$100 million, all as determined in accordance with Part IX of the Competition Act and the Notifiable Transactions Regulations thereunder.

#### 4.2 Vendors' Representations

The Vendors, jointly and severally, represent and warrant to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledge that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Timminco is a corporation duly incorporated, organized and subsisting under the *Canada Business Corporations Act*;
- (b) BSI is a corporation duly organized and subject to and subsisting under the *Business Corporations Act* (Québec);
- (c) except as disclosed in the Disclosure Letter, BSI has good and marketable title to the QSLP Equity, free and clear of Encumbrances other than the Permitted Encumbrances. The total issued and outstanding securities of QSLP consist of 100,010 units. The total issued and outstanding capital of QSGP consists of 51 Class A Shares and 49 Class B Shares. Except as set forth in the QSLP Contracts, there are no existing rights or privileges to acquire any unissued securities of QSLP or QSGP or any of such outstanding securities held by BSI or QSGP;
- (d) except as disclosed in the Disclosure Letter and as of the file currency date specified therein, BSI is the sole and unconditional ~~legal and~~ beneficial owner of and has good and marketable title to the BSI Owned Property and is the sole and unconditional beneficial and legal owner of and has good and marketable title to and the other material Purchased Assets purported to be owned by BSI, excluding Contracts and Intellectual Property, free and clear of Encumbrances other than Permitted Encumbrances;
- (e) except as disclosed in the Disclosure Letter and as of the file currency date specified therein, (i) QSLP has good and marketable title to all of the material personal property purported to be owned by QSLP and the QSLP Real Property and has a valid leasehold interest in the QSLP Mineral Rights; (ii) the QSLP Mineral Rights are in good standing and in full force and effect; and (iii) the QSLP Mineral Rights and product derived from the QSLP Mineral Rights are not subject to or bound by any royalty, royalty interest or similar payment or interest or other Encumbrances;
- (f) except as would not result in a Material Adverse Change and except as disclosed in the Disclosure Letter, to the best of the Vendors' and their management's knowledge: (i) the use of the BSI Owned Property by BSI is in compliance with and not subject to any liability under Applicable Laws related to environmental protection, restoration and rehabilitation, occupational health and safety or natural resources matters and (ii) QSLP's operations are in compliance with and not subject to any liability under Applicable Laws related to environmental protection, restoration and rehabilitation, natural resource or occupational health and safety matters;
- (g) except as disclosed in the Disclosure Letter, the Vendors have not licensed their rights in any Intellectual Property held by the Vendors, to any Person. The Vendors have not received from any Person any notice



(written or oral) that any of the Vendor's registered Intellectual Property is invalid or defective, or the use of such registered Intellectual Property is or would be infringing, misappropriating or violating in any way any Intellectual Property of such Person;

- (h) the Vendors and their management are unaware of any pending challenge to the validity of Silicon Metal Contracts or the transactions contemplated thereunder and has not received any written notice threatening any such challenge;
- (i) the aggregate amount of the Shortfall at its highest was 5,440 metric tons. As at January 30, 2012, QSLP had produced and delivered to DCC no less than 2,500 metric tons of silicon metal at BSI's request in satisfaction of BSI's obligation to DCC in respect of the Shortfall;
- (j) excluding the CCAA Proceedings, the Vendors are not subject to any order of any Governmental Authority, nor are there any such orders threatened to be imposed by any Governmental Authority, which could affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Vendors;
- (k) subject to obtaining the Approval and Vesting Order, the Vendors have the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- (l) subject to obtaining the Approval and Vesting Order, each of the Vendors has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and the entering into of this Agreement and completion of the transactions contemplated herein will not breach its constating documents;
- (m) other than the CCAA Proceedings, there are no proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Vendors or affecting any of the Purchased Assets, the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Vendors;
- (n) subject to obtaining the Approval and Vesting Order, this Agreement and all other documents contemplated hereunder to which the Vendors are or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by each of the Vendors and constitute or will, as at the Closing Time, constitute legal, valid and binding obligations of each of the Vendors enforceable in accordance with the terms hereof or thereof;
- (o) neither Vendor is a non-resident of Canada for purposes of section 116 of the Income Tax Act;

- (p) the aggregate book value of the Purchased Assets does not exceed \$330 million, as calculated in accordance with the Investment Canada Act and the regulations thereto;
- (q) the Vendors and their affiliates do not have assets in Canada that exceed \$300 million or gross revenues from sales in, from or into Canada that exceed \$300 million, all as determined in accordance with Part IX of the Competition Act and the Notifiable Transactions Regulations thereunder;
- (r) each of the Vendors is a registrant for the purposes of tax imposed under (A) *An Act Respecting the Québec Sales Tax* (Québec) with the following registration numbers for Timminco and BSI, respectively, 1000873612 and 100829788, and (B) Part IX of the Excise Tax Act with the following registration numbers for Timminco and BSI, respectively, 105289094 RT0002 and 104881412 RT0001;
- (s) each of QSLP and QSGP has paid all taxes which are due and payable by it to all applicable Governmental Authorities and has remitted all amounts that it withheld or collected on account of amounts that it was required by Applicable Law to have withheld or collected, including for all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes, Sales Tax and any other material taxes to the appropriate Governmental Authority within the time required under Applicable Law;
- (t) no finder, broker or similar intermediary acting on behalf of the Vendors or any of their Affiliates is entitled to a commission, fee or other compensation from the Purchaser in connection with the negotiation, execution or delivery of this Agreement or the consummation of the Transaction; and
- (u) to the best of the Vendors' knowledge, information and belief, after due inquiry, there are no pre-Closing breaches of contract under the QSLP Contracts listed in items 5 and 6 of Schedule F hereto.

### 4.3 Limitations

With the exception of the Vendors' representations and warranties in Section 4.2 and the Purchaser's representations and warranties in Section 4.1, neither the Vendors nor the Purchaser, nor their respective Representatives, nor any of their respective officers, directors or employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendors, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.



## SECTION 5 CONDITIONS

### 5.1 Conditions - Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) all representations and warranties of the Vendors contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
- (b) the Vendors shall have performed in all material respects each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time;
- (c) all stays of proceedings contained in the Initial Order shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not prejudicial to the Purchaser or which does not adversely affect the Purchaser's rights under this Agreement or the Purchased Assets and the exercise of rights contained in the Initial Order has not been amended or modified in any manner prejudicial to the Purchaser as at the Closing Time;
- ~~(d)~~ the Approval and Vesting Order and the Assignment Order and shall have been obtained, shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) and all appeal periods shall have expired therefrom and such Orders shall be final and binding;
- ~~(e)~~ (d) each Consent and Approval, including the DCC Consent and the Antitrust Clearances, shall have been obtained as at the Closing Time or, in the absence of any such Consent and Approval, the Court shall have ~~approved~~ granted the Assignment Order in respect of such Consent and Approval ~~and it~~ (other than the Antitrust Clearances) and the Assignment Order shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) as at the Closing Time;
- ~~(f)~~ (e) after the date of this Agreement and before the Closing Time, there shall not have occurred any Material Adverse Change;
- ~~(g)~~ (f) the Closing Date Statement of QSLP Working Capital shall have been determined in accordance with Section ~~3.93.10~~ (d) or ~~Section 3.93.10~~ (e) and the QSLP Working Capital shown on the Closing Date Statement ~~by~~ of QSLP Working Capital shall not be less than \$7,500,000;

- (h) ~~(g)~~ BSI shall have delivered to the Purchaser evidence, that the minimum aggregate amount of silicon metal that QSLP shall have produced and delivered to DCC at BSI's request in satisfaction of BSI's obligation to DCC in respect of the Shortfall shall be no less than the amount set forth in Schedule "I"; and
- (i) ~~(h)~~ the Vendors shall deliver a certificate, to the Purchaser certifying that all Post-Filing Costs and taxes payable in respect of the transactions contemplated under the HP2 Severance Transaction Documents in accordance with the valuation specified therein, that are due, have been paid or provided for, and for those incurred but not yet due, provided for.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 5.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 5.1 is not satisfied or performed on or prior to the date specified therefor, the Purchaser may elect on written notice to the Vendors to terminate this Agreement.

## **5.2 Conditions - Vendors**

The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
- (b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time.

The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 5.2 may be waived by the Vendors in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in Section 5.2 is not satisfied or performed on or prior to the date specified therefor, the Vendors may elect on written notice to the Purchaser to terminate the Agreement.

## **5.3 Conditions - Purchaser and Vendors**

The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:

- (a) this Agreement is the Successful Bid (for greater certainty, in accordance with the Bidding Procedures, to the extent any Portion Bid or an

Aggregated Bid is the Successful Bid (each such capitalized term as defined in the Bidding Procedures), the Purchaser shall not be obliged to complete the Transaction or purchase any subset of assets or assume any subset of liabilities which are not covered by such Portion Bid or Aggregated Bid);

- (b) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom);
- (c) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
- (d) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser. If the conditions set out in this Section 5.3 are not satisfied performed or mutually waived on or before the Termination Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

#### **5.4 Conditions - Acceleration of Time Periods**

Notwithstanding section 13 of the Bidding Procedures providing for up to 28 days to seek approval of the Transaction, on request of the Purchaser, the Vendors will use commercially reasonable efforts to bring a motion to obtain the Approval and Vesting Order and the Assignment Order as soon as is practicable prior to the expiry of such 28 day period.

#### **5.5 Conditions - Antitrust Clearances**

The Purchaser undertakes to use commercially reasonable efforts to obtain the Antitrust Clearances as quickly as possible after this Agreement is executed by all parties and the Purchaser has become the Successful Bidder:

- (a) following consultation with the Vendors, the Purchaser shall determine, acting reasonably, the jurisdictions in which filings are required under any applicable antitrust, competition or similar rules in order to obtain the Antitrust Clearances;
- (b) the Purchaser shall take all actions necessary to submit the filings required to obtain the Antitrust Clearances as promptly as possible, provided that the Purchaser has received the required information from the Vendors;
- (c) in order to ensure that the Antitrust Clearances are obtained as soon as reasonably practicable, the Purchaser shall take the lead in preparing the filings required to obtain the Antitrust Clearances and the Vendors shall undertake to provide the Purchaser promptly with all assistance and

information available to them that is reasonably requested by the Purchaser in order to prepare the filings required to obtain the Antitrust Clearances.

- (d) the Purchaser shall share drafts of the filings or any subsequent submission with the Vendors. In this context, competitively sensitive information will only be provided to the Vendors' external counsel on an "external counsel only" basis;
- (e) the Purchaser shall not agree to the extension of any applicable review or waiting period without the consent of the Vendors. Such consent, where requested by the Purchaser, shall not be unreasonably withheld, provided however that any such extension shall not, in and of itself, extend the Termination Date or the termination rights under Section 6.10;
- (f) the Purchaser shall pay all relevant administrative fees due to the Governmental Authorities in the context of the merger control filings to obtain the Antitrust Clearances;
- (g) the Purchaser shall provide the Vendors with final copies of filings submitted to Governmental Authorities in connection with obtaining the Antitrust Clearances; except to the extent such information is competitively sensitive, in which case it shall be shared with the Vendors' external counsel only;
- (h) the Purchaser shall not be required to offer any divestments or other remedies which may be required to obtain the Antitrust Clearances;
- (i) the Purchaser shall use its reasonable commercial efforts to obtain all Antitrust Clearances by 18 June 2012 or, in those jurisdictions where the Antitrust Clearance is not available by this date, a derogation from the suspension obligation.

Notwithstanding anything herein the contrary, the Purchaser shall not disclose to the Vendors or the Vendors' counsel any information provided to it by DCC, unless DCC has consented thereto.

## **SECTION 6 CLOSING**

### **6.1 Closing**

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Stikeman Elliott LLP, Commerce Court West, 199 Bay Street, Toronto, Ontario, M5L 1B9, or as otherwise determined by mutual agreement of the Parties in writing, but, in any event, shall take place prior to the Termination Date.

## 6.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendors the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

- (a) the Closing Cash Payment;
- ~~(b) a payoff letter by the DIP Lender in respect of amounts outstanding under the DIP Facility including outstanding amounts advanced to the Vendors, interest accrued and unpaid thereon and any expenses and other amounts owing thereunder;~~
- (b) ~~(e)~~ the Assignment and Assumption Agreement and any Specific Conveyance requiring execution by the Purchaser;
- (c) ~~(d)~~ payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section ~~3.53.6~~3.43.5(c) executed by the Purchaser;
- (d) ~~(e)~~ joinders to the applicable QSLP Contracts, as required thereunder;
- (e) ~~(f)~~ a document specifying the Purchase Price allocation for tax purposes provided for in Section ~~3.43.5~~3.43.5;
- (f) ~~(g)~~ a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time;
- (g) ~~(h)~~ an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 5.1 of this Agreement have been fulfilled, performed or waived as of the Closing Time;
- (h) ~~(i)~~ an access agreement executed by the Purchaser substantially in accordance with the terms and conditions as set out in the access agreement term sheet attached hereto as Schedule "~~NO~~" (the "**Access Agreement Term Sheet**") and such reasonable and customary terms, conditions, representations, warranties, and covenants as typically found in agreements of this nature; and
- (i) ~~(j)~~ such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to this Agreement.

### 6.3 Vendors' Deliveries on Closing

At or before the Closing Time, the Vendors shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) an executed copy of each Specific Conveyance;
- (b) all Consents and Approvals, or with respect to any Consent and Approval which is not obtained, a notarial copy of an Assignment Order in lieu of such Consent and Approval;
- (c) the Assignment and Assumption Agreement and the Books and Records relating to the Purchased Assets;
- (d) a notarial copy of the Approval and Vesting Order;
- (e) a certificate dated as of the Closing Date confirming that there has been no Material Adverse Change; that all of the representations and warranties of the Vendors contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendors have performed in all material respects the covenants to be performed by them prior to the Closing Time;
- (f) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 5.2 of this Agreement have been fulfilled, performed or waived as of the Closing Time;
- (g) an executed copy of the Monitor's Certificate;
- (h) stock/unit certificates or similar documents representing the QSLP Equity;
- (i) if applicable, the election(s) referred to in Section ~~3.53.6~~(c) executed by the Vendors;
- (j) resignation letters, effective as of the Closing Time, executed by each of the officers, directors or responsible persons nominated, elected or appointed by BSI in QSLP or QSGP;
- (k) an access agreement executed by Grupo Ferroatlantica, S.A., substantially in accordance with the terms and conditions as set out in the Access Agreement Term Sheet and such reasonable and customary terms, conditions, representations, warranties and covenants as typically found in agreements of this nature; and
- (l) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

## 6.4 Possession of Assets

- (a) The Vendors shall remain in possession of the Purchased Assets until Closing. Until Closing and subject to the last sentence of this Section 6.4(a), the Vendors shall (i) subject to the Orders of the Court in the CCAA Proceedings, use the Purchased Assets only in the Ordinary Course of Business and use commercially reasonable efforts to maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business, (ii) not dispose of any of the Purchased Assets other than sale of inventory in the Ordinary Course of Business, and (iii) not enter into any material contract or agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, not to be unreasonably withheld, and provided that any failure to respond to any such request for consent within ~~two~~five (25) Business Days of receipt by the Purchaser of such request shall be deemed to be consent hereunder. ~~Notwithstanding the foregoing, the Vendors shall not sell or dispose of any of the inventory contemplated in item 5 of Schedule B.~~ Until Closing, and subject to the last sentence of this Section 6.4(a), BSI shall, to the extent it is empowered to do so pursuant to the QSLP Contracts and the rights attached to the QSLP Equity, (i) cause the business of QSLP to be conducted in the ordinary course consistent with the conduct of such business on the date hereof and (ii) cause QSLP not to make any distributions to the limited partners of QSLP. BSI and QSLP may enter into the HP2 Severance Transaction Documents after the date of this Agreement and before Closing and in connection therewith BSI shall provide updated Schedules "B" and "F" and an updated Disclosure Letter to reflect the transactions contemplated under the HP2 Severance Transaction Documents and such updated Schedules and the Disclosure Letter shall be accepted by the Purchaser as Schedule "B", "F" and the Disclosure Letter, as the case may be, hereunder, provided that the Vendors shall only enter into a HP2 Severance Transaction Document if all HP2 Severance Transaction Documents are entered into on or before Closing.
- (b) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendors have no obligation to deliver physical possession of the Purchased Assets to the Purchaser other than as set forth in Section 6.3(h). In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied and the Purchaser has satisfied all delivery requirements outlined in Section 6.2. The Purchaser shall promptly notify the Vendors of any Excluded Assets which may come into the possession or control of the Purchaser shall promptly release such Excluded Assets to



the Vendors, or to such other Person as the Vendors may direct in writing, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendors shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. The Purchaser shall permit the Vendors and their agents and representatives to have reasonable access to such premises to prepare for sale, sell and remove any such Excluded Equipment for a period of three (3) months after the Closing Date. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three (3) months following Closing shall vest in the Purchaser unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the applicable Vendor but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.

#### 6.5 Assumption of Obligations

At the Closing Time and conditional upon Closing, the Purchaser agrees to pay and be responsible for all the liabilities and obligations of the Vendors under the Contracts to the extent that such liabilities and obligations consist of liabilities or obligations that arise out of event or circumstances that occur after the Closing Time or are to be performed after the Closing Time.

#### 6.6 ~~6.5~~ Material Adverse Change

The Vendors shall notify the Purchaser upon the occurrence of a Material Adverse Change or the occurrence of any material loss or damage to the Purchased Assets.

#### 6.7 ~~6.6~~ Access Rights

Upon at least two (2) Business Days' prior notice by the Purchaser to the Vendors and at any time (i) after the Purchaser has become the Successful Bidder, or (ii) after notice to the Purchaser from the Vendors of the occurrence of an event or circumstance referred to in Section ~~6.5, 6.6~~, the Purchaser may have reasonable access to the Purchased Assets during normal business hours and in each case prior to Closing for the purpose of enabling the Purchaser to conduct such inspections of the Purchased Assets as it deems appropriate, acting reasonably. Such inspection shall only be conducted in the presence of a representative of the Vendors, if so required at the discretion of the Vendors. The Purchaser shall not conduct any tests, drilling or other invasive action with respect to the Purchased Assets without the prior written consent of the Vendors, which consent may be withheld in the Vendors' sole and absolute discretion. The Purchaser agrees to indemnify and save the Vendors harmless from and against all claims, demands, losses, actions and costs incurred or arising from or in any way directly related to physical harm to property or people caused by the Purchaser's inspection of the Purchased Assets or the attendance of the Purchaser, its employees or agents at properties comprising part of the Purchased Assets. For greater certainty, the Purchaser shall not be responsible to indemnify and save the Vendors harmless from and against the findings of the Purchaser's inspection.



The Vendors shall continue to make the online data room available to the Purchaser, the Back-Up Bidder (as defined in the Bidding Procedures) and their respective employees and advisors.

**6.8**    ~~6.7~~ **Risk**

The Purchased Assets shall be and remain at the risk of the Vendors to the extent of their interest until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Purchased Assets or the assets of QSLP, including but not limited to the Facility, shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) days after notification to the Purchaser by the Vendors of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) days of the Closing Date) in which event this Agreement shall (for greater certainty and without limitation subject to Section 6.10) be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial (or if it is substantial but the Purchaser declines its option to terminate), the Purchaser shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an agreed abatement. If any dispute arises under this section as to whether damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined in accordance with Section ~~6.8~~6.9. For the avoidance of doubt, the Parties agree with respect to damage or destruction of the QSLP Assets, the Purchaser shall not be entitled to any assignment of the proceeds of insurance payable to QSLP however such proceeds shall be distributed to the partners of QSLP subsequent to the Closing.

**6.9**    ~~6.8~~ **Dispute Resolution**

If any dispute arises:

- (a) under Section ~~6.7~~6.8 as to whether any damage or destruction is substantial or with respect to the amount of any abatement; or
- (b) with respect to any other matter related to the Transaction or the interpretation or enforcement of this Agreement;

such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

**6.10**    ~~6.9~~ **Termination**

This Agreement shall automatically terminate at any time prior to the Closing Time upon the occurrence of any of the following:

- (a) by mutual written agreement of the Vendors and the Purchaser;

- (b) if the Agreement is not the Successful Bid or the Back-Up Bid (as determined pursuant to the Bidding Procedures); or
- (c) if the Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid is closed.

This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:

- (d) as provided in Section 5 (provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled) or Section ~~6.7~~6.8; or
- (e) by any of the Parties (provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled) if Closing shall not have occurred on or prior to the Termination Date in accordance with Section 5.3.

If this Agreement is terminated in the circumstances set out in this Section, all further obligations of the Parties under this Agreement will terminate and neither Party shall have any liability or further obligations hereunder, except as contemplated in Section ~~6.10~~6.11, which shall survive such termination.

#### 6.11 ~~6.10~~ Effects of Termination and Closing

- (a) If this Agreement is terminated pursuant to Section 5, ~~6.7~~6.8 or ~~6.9~~6.10, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of: (i) Section ~~3.3~~3.4 (Deposit) and; (ii) Section ~~6.10~~6.11 (Effects of Termination and Closing); ~~and (iii) Section 7.2 (Expense Reimbursement).~~
- (b) If the Transaction is not completed solely as a result of Purchaser's failure to perform any of its obligations hereunder, then the Deposit shall be forfeited to the Vendors as liquidated damages and the Vendors shall have no other rights and remedies against the Purchaser available at law or in equity.
- (c) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

~~6.11~~ ~~Assumption of Obligations~~

~~At the Closing Time and conditional upon Closing, the Purchaser agrees to pay and be responsible for all the liabilities and obligations of the Vendors under the Contracts to the extent that such liabilities and obligations consist of liabilities or obligations that arise out of event or circumstances that occur after the Closing Time or are to be performed after the Closing Time.~~

~~SECTION 7~~  
~~BIDDING PROCEDURES~~

~~7.1~~ ~~Bidding Procedures Order~~

~~The Parties acknowledge and agree that the Bidding Procedures Order recognized the Stalking Horse Agreement as a baseline or “stalking horse bid” and approved the payment of the Expense Reimbursement in the circumstances set out in Section 7.2 of the Stalking Horse Agreement.~~

~~7.2~~ ~~Expense Reimbursement~~

~~Notwithstanding the entry into of this Agreement, the Parties acknowledge and agree that the Expense Reimbursement remains payable in accordance with Section 7.2 of the Stalking Horse Agreement, as approved by the Bidding Procedures Order, and that nothing herein shall constitute or be deemed to constitute any amendment, alteration, modification to, or waiver of any rights in respect of, Section 7.2 of the Stalking Horse Agreement or the Bidding Procedures Order.~~

~~SECTION 7~~ SECTION 8  
~~PERFORMANCE GUARANTEE~~

7.1 ~~8.1~~ Performance Guarantee

- (a) ~~The~~In the event Wacker Chemie AG makes the election and assignment referred to in Section 8.11, the Guarantor irrevocably and unconditionally guarantees the timely and complete performance of, and compliance with the Purchaser’s obligations ~~under Sections 3.1, 3.2 (excluding 3.2(d)), 3.4, 3.5, 3.6, 3.7, 9.1 and 9.10~~hereunder (collectively, the “**Guaranteed Obligations**”).
- (b) If for any reason the Purchaser fails at any time to perform or comply with any Guaranteed Obligation that is to be performed or complied with by the Purchaser under this Agreement, then the Guarantor shall perform or comply with such Guaranteed Obligation in accordance with and subject to the provisions of this Agreement. Such performance or compliance by the Guarantor is deemed to be performance or compliance by the Purchaser under this Agreement.

- (c) The Guarantor is jointly and severally liable with the Purchaser for the performance of, and compliance with, the Guaranteed Obligations. The Vendors are not bound to proceed against the Purchaser or to pursue any rights or remedies against the Purchaser before being entitled to pursue its rights against the Guarantor.
- (d) The obligation of the Guarantor in this Section ~~87~~ shall terminate immediately upon Closing or a termination of this Agreement that is not solely as a result of a failure of the Purchaser to perform any of its obligations hereunder except, in the case of a Closing, for the Guaranteed Obligations in respect of (i) the determination of the Statement of BSI Working Capital in accordance with Section ~~3.6,3.7~~, (ii) the payment of the Purchase Price adjustment, if any, pursuant to Section 3.7 and (iii) the indemnity obligation of the Purchaser in Section ~~9.108.10~~ which shall survive until satisfaction of the matters referred to in paragraphs (i) and (ii) above have been completed and thereafter shall terminate (except in respect of any amounts that have become due under Section ~~9.108.10~~ prior to such date).
- (e) The guarantee shall be in favour of the Vendors and no other party shall be considered a third party beneficiary.

## 7.2 ~~8.2~~ Absolute Liability

The liability of the Guarantor is absolute and unconditional irrespective of: (i) any lack of validity or enforceability of any Guaranteed Obligation against the Purchaser (other than the termination of any Guaranteed Obligations in accordance with the terms hereof); (ii) any change in the time or times for, or place or manner of performance or any other indulgences which the Vendors may grant to the Purchaser; (iii) any amendment, restatement, replacement, supplement, modification or renewal of this Agreement; (iv) any assignment of all or any part of this Agreement; (v) any limitation of status or power, disability, incapacity or other circumstance relating to the Purchaser, including any bankruptcy, insolvency, winding-up, dissolution, liquidation, restructuring or other creditors' proceedings involving or affecting the Purchaser; or (vi) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Purchaser or any reorganization, amalgamation or other change in the existence of the Purchaser.

## 7.3 ~~8.3~~ Defences

The liabilities and obligations of the Guarantor under this Section ~~87~~ are subject to the terms of this Agreement and will not exceed any liability or obligation of the Purchaser to the Vendors under this Agreement. The Guarantor is entitled to all rights, privileges and defences available to the Purchaser with respect to any obligation or liability, including without limitation all provisions of this Agreement relating to limitation of liability and the resolution of disputes.

**7.4 ~~8.4~~ Payment on Demand**

The Guarantor will pay and perform its liabilities and obligations under this Section ~~8.7~~ immediately after demand for such payment and performance is made in writing to it. Under no circumstances shall the Guarantor's obligation hereunder exceed the Purchase Price, as it may be adjusted pursuant to Section ~~3.7.3.8~~. For the avoidance of doubt, upon the payment of the Purchase Price by the Guarantor, the Guarantor shall be subrogated to the rights of the Purchaser and subject to the obligations of the Purchaser, all in accordance with the terms of this Agreement.

**SECTION 8~~SECTION 9~~  
GENERAL**

**8.1 ~~9.1~~ Access to Books and Records**

- (a) For a period of 6 years from the Closing Date or for such longer period as may be required by Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement and subject to Section ~~9.18.1~~(c), each Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of either Vendor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.
- (b) Subject to Section ~~9.18.1~~(c), for a period of the lesser of (x) 6 years from the Closing Date and (y) so long as the Purchaser together with any Affiliate thereof controls QSLP or QSGP, the Purchaser shall cause QSGP to permit each Vendor (and any representative, agent or trustee in bankruptcy of the estate of either Vendor) to inspect the books and records of the Vendors maintained by QSGP and QSLP and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. Any information received by the Purchaser or its representatives pursuant to this Section ~~9.18.1~~ shall be held in strict confidence except as may be required by Applicable Law (including disclosure required in connection with any tax returns or bankruptcy and insolvency proceedings).
- (c) If a Vendor or its affiliates are engaged in any business that competes, directly or indirectly, with the business carried on by QSLP, then the Purchaser shall only be required to provide the right to inspect as contemplated in Section ~~9.18.1~~(a) or (b) to such Vendor if the sole purpose is of evaluating or preparing any of its tax returns, the sale of the remaining assets of either Vendor, in respect of any third party claim against such Person or in connection with any bankruptcy and insolvency

proceeding. For greater certainty, the right of Monitor, any former director or officer or any trustee in bankruptcy of the estate of either Vendor to inspect books and records and make copies thereof shall not be restricted under this Section ~~9.18.1~~(c).

**8.2** ~~9.2~~ Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax or e-mail, addressed:

in the case of the Purchaser, as follows:

~~QSI Partners Ltd.  
1st Floor – Windward 1  
Regatta Office Park  
PO BOX 10338  
Grand Cayman KY1-1003  
Cayman Islands~~  
Wacker Chemie AG  
Hanns-Seidel-Platz 4  
81737 Muenchen, Germany

**Attention:** ~~Desiree Mercer~~Dr. Tobias Brandis  
~~Fax: (345) 949-7230~~  
Telephone: ~~(345) 949-7232~~+49 89 6279 2760  
Email: Tobias.Brandis@wacker.com

with a copy to:

~~Torys~~Osler, Hoskin & Harcourt LLP  
~~79 Wellington Street West  
Suite 3000  
Box 50, 1 First Canadian Place~~  
Toronto, Ontario  
M5KX 1N2B8

**Attention:** ~~David Bish~~Steven Golick  
Fax: (416) ~~865-7380~~862-6666  
Email: ~~dbish@torys~~sgolick@osler.com

and in the case of the Guarantor, as follows:

~~Globe Specialty Metals, Inc.  
One Penn Plaza  
250 West 34<sup>th</sup> Street, Suite 4125  
New York, NY 10119~~

Wacker Chemie AG  
Hanns-Seidel-Platz 4  
81737 Muenchen, Germany

**Attention:** ~~Stephen Lebowitz~~Goetz Neumann  
**Fax:** ~~(212) 798-8137~~  
**Telephone:** ~~(212) 798-8122~~+ 49 89 6279 1205  
**Email:** goetz.neumann@wacker.com

with a copy to:

~~Torys Osler, Hoskin & Harcourt LLP~~  
~~79 Wellington Street West~~  
~~Suite 3000~~  
Box 50, 1 First Canadian Place  
Toronto, Ontario  
M5K 1N2B8

**Attention:** ~~David Bish~~Steven Golick  
**Fax:** (416) ~~865-7380~~862-6666  
**Email:** ~~dbish@torys~~sgolick@osler.com

and in the case of the Vendors, as follows:

Timminco Limited  
150 King Street West, 2401  
Toronto, Ontario  
M5H 1J9

**Attention:** **Peter Kalins,**  
**President, General Counsel and Corporate Secretary**  
**Fax:** (416) 364-3451  
**Email:** PKalins@timminco.com

with a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West, 199 Bay Street  
Toronto, Ontario  
M5L 1B9

**Attention: Daphne MacKenzie**  
Fax: (416) 947-0866  
Email: dmackenzie@stikeman.com

with a copy to the Monitor:

FTI Consulting Canada Inc.  
TD Waterhouse Tower, Suite 2010  
79 Wellington Street  
Toronto, Ontario  
M5K 1G8

**Attention: Nigel Meakin**  
Fax: (416) 649-8101  
Email: nigel.meakin@fticonsulting.com

with a copy to:

Blake, Cassels & Graydon LLP  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario  
M5L 1A9

**Attention: Linc Rogers**  
Fax: (416) 863-2653  
Email: Linc.Rogers@blakes.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax or e-mail before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by fax or e-mail after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

### 8.3 ~~9.3~~ Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser or by their respective solicitors.

### 8.4 ~~9.4~~ Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.



**8.5 ~~9.5~~ Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

**8.6 ~~9.6~~ Benefit of Agreement**

This Agreement shall ~~enure~~ensure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and no Person, other than the Parties and their successors and their permitted assigns, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

**8.7 ~~9.7~~ Entire Agreement**

This Agreement, the attached Schedules hereto, ~~the letter contemplated in Sections 1.1(ccc) and 1.1(mmmm), the Disclosure Letter~~ and the confidentiality and standstill agreement dated as of January ~~6~~7, 2012 between Timminco and the Purchaser, as supplemented by the addendum thereto dated as of January ~~11~~18, 2012, ~~the DIP Amendment~~, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

**8.8 ~~9.8~~ Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

**8.9 ~~9.9~~ Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**8.10 ~~9.10~~ Commission**

The Purchaser agrees to indemnify the Vendors against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendors shall jointly and severally indemnify the Purchaser for any third party or agent or broker fees or other commissions payable by the Vendors on the Purchase Price or otherwise in connection with the Transaction.

**8.11** ~~9.11~~ **Assignment by Purchaser**

This Agreement may not be assigned by the Purchaser without the prior written consent of the Vendors, which consent may be withheld in the Vendors' sole and absolute discretion; provided, however that the Purchaser shall be permitted to assign the benefit of all or a portion of this Agreement prior to or after Closing to an Affiliate thereof in circumstances where (i) prior notice of such assignment is provided to the Vendors, (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, and (iii) such assignment shall not release the Purchaser or the Guarantor (in the case of the Guarantor during the existence of the Guarantee) from any obligation or liability hereunder in favour of the Vendors, and the Purchaser and the Guarantor ~~(in the case of the Guarantor during the existence of the Guarantee)~~ shall acknowledge and confirm their continuing obligations and liabilities in favour of the Vendors in form and substance satisfactory to the Vendors; for greater certainty, the Purchaser shall be permitted to assign the right to buy all or a portion of the Purchased Assets to one or more Affiliates and such assignment shall be permitted so long as the requirements of this Section ~~9.11~~8.11 are complied with. This Agreement may not be assigned by the Vendors without the consent of the Purchaser which consent may be withheld in the Purchaser's sole and absolute discretion.

**8.12** ~~9.12~~ **Further Assurances**

Each of the Parties shall, at the request and expense of the requesting party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents (including registrations and removal of Encumbrances (other than Permitted Encumbrances)) and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

**8.13** ~~9.13~~ **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

**8.14** ~~9.14~~ **Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein, other than those contained in Section 2.5(a), Section 2.5(g), Section 3.1, Section ~~3.5~~3.6, Section 6 or Section 8, is prohibited or unenforceable pursuant to applicable law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**BECANCOUR SILICON INC.**

By: \_\_\_\_\_  
Name:  
Title:

**TIMMINCO LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

**~~QSI PARTNERS LTD.~~ WACKER CHEMIE AG**

By: \_\_\_\_\_  
~~By:~~ \_\_\_\_\_  
Name: Dr. Joachim Rauhut  
Title: Member of the Executive Board & CFO

By: \_\_\_\_\_  
Name: Dr. Tobias Brandis  
Title: Senior Vice President, Corporate Development

**~~GLOBE SPECIALTY METALS, INC.~~**

~~By:~~ \_\_\_\_\_  
~~Name:~~  
~~Title:~~

**Schedule A**  
**Purchased Silicon Metal Assets**

All of BSI's right, title and interest, in the QSLP Equity, the QSLP Contracts, the Silicon Metal Contracts and ancillary assets to the extent set forth in these Schedules.

1. Intellectual Property

- (a) *See attached Silicium Bécancour Inc. Non-Solar IP Portfolio Summary regarding patents and patent applications plus any other BSI patents or BSI patent applications relating to the silicon metal business (if any).*
- (b) *Intellectual Property License Agreement among Québec Silicon Limited Partnership as Licensor and Bécancour Silicon Inc. and Dow Corning Corporation as Licensees, dated October 1, 2010.*
- (c) *Intellectual Property License Agreement among Québec Silicon as Licensee and Bécancour Silicon Inc. and Dow Corning Corporation as Licensors, dated October 1, 2010.*
- (d) *Intellectual property owned by Bécancour Silicon Inc. relating to the Composite Electrode Technology as such term is defined in the Intellectual Property Assignment Agreement dated September 30, 2010 between Bécancour Silicon Inc. and Québec Silicon Limited Partnership.*

2. Silicon Metals Accounts Receivables

3. All Prepaid Expenses

4. All Inventory – Silicon Metals

5. All Inventory – Packing Supplies

Silicium Bécancour Inc. Non-Solar IP Portfolio Summary

1- Title		ELECTRODE FOR SILICON ALLOYS AND SILICON METAL							
Inventor(s):		BOISVERT, RENE & DOSTALER, JACQUES & DUBOIS, JACQUES & KSINSIK, DIETER W.							
Subject #	Country	Application # / Pct	Filing Date	Priority	Owner	Registration Date / Number	Due Date(s)	Status / other	Expire
0001 EXPIRED	CANADA	2.204.425	02-05-1997		SKW CANADA INC.				
0003 EXPIRED	INTERNATIONAL P	PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.				
0004 ACTIVE	SOUTH AFRICA	98/3689	30-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SKW CANADA INC.	27-01-1999 98/3689	Annual maintenance fee 30-04-2012		
0006 ACTIVE	BRAZIL	PI 9809347-9 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.		Annual maintenance fee 26-07-2012		16-11-2021
0012 ACTIVE	CANADA	2.286.658 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	BECA NCOUR SILICON INC./SILICIUM BECANCOUR INC.	24-01-2006 2.286.658	Annual maintenance fee 27-04-2012		27-04-2018
0002 ACTIVE	UNITED STATES OF AM	958.323	27-10-1997	2.204.425 02-05-1997	BECA NCOUR SILICON INC./SILICIUM BECANCOUR INC.	29-12-1998 5.854.807			27-10-2117
0005 ACTIVE	EUROPE	98 916 756.4 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.	17-07-2002 0 979 596	Annual maintenance fee 27-04-2012		
0011 ACTIVE	YUGOSLAV REPUB	P-94/99 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.	28-01-2003 900756	Annual maintenance fee 27-04-2012		
0008 ACTIVE	ICELAND	S219/1999 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.	15-11-2004 1955	Annual maintenance fee 27-04-2012		
0010 ACTIVE	NORWAY	19999254 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.	29-09-2003 315630	Annual maintenance fee 27-04-2012		
0007 ACTIVE	POLAND	P-336590 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.	29-07-2005 189321	Annual maintenance fee 27-04-2012		
0009 ACTIVE	SLOVAKIA	PV 1493-99 PCT/CA98/00409	27-04-1998	2.204.425 02-05-1997 958.323 27-10-1997	SILICIUM BECANCOUR INC.	14-08-2008 286447	Annual maintenance fee 27-04-2012		

**Schedule B**  
**~~Purchased Solar Grade Silicon Assets~~**  
**Real Property**

~~All of BSI's right, title and interest, in and to all of the tangible and intangible assets, properties, rights and Claims, wherever located, used, intended for use or arising in connection with BSI's currently inactive business of producing solar grade silicon through a division of BSI, Timminco Solar, including the Solar Grade Silicon Contracts, Solar Equipment and the Solar Intellectual Property.~~

**1. Owned Property**

**HP1 PROPERTY:**

~~Legal (registered) and beneficial owner: BSI~~

~~DESCRIPTION OF IMMOVABLE~~

~~An immovable situated in the City of Bécancour, Province of Québec, known and designated as being composed of the following lots, namely:~~

~~lot number THREE MILLION TWO HUNDRED AND NINETY FOUR THOUSAND AND FIFTY FOUR (3 294 054) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2); and~~

~~lot number FOUR MILLION ONE HUNDRED AND TEN THOUSAND FIVE HUNDRED AND NINETY EIGHT (4 110 598) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2);~~

~~With the buildings and all other structures, fixtures, equipment and ancillary improvements located thereon (other than Excluded Assets), including the building bearing the civic address 5500 Yvon Trudeau Street, City of Bécancour, Province of Québec, G9H 0G1.~~

~~The whole as it is currently found with all that is or will be incorporated, attached, joined or united by accession to this immovable and that is considered an immovable under the law.~~

**HP2 PROPERTY:**

~~Registered (legal) owner: QSGP (as nominee for BSI)~~

~~Beneficial owner: BSI~~

~~DESCRIPTION OF IMMOVABLE~~

~~An immovable situated in the City of Bécancour, Province of Québec, known and designated as being lot number FOUR MILLION SEVEN HUNDRED AND TWO THOUSAND FOUR~~

HUNDRED NINETY-SEVEN (4 702 497) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2).

With the buildings ~~and all other structures, fixtures, equipment and ancillary improvements~~ located thereon (other than Excluded Assets and all other structures, fixtures and equipment), including the building bearing the civic address 6400 Yvon-Trudeau Street, City of Bécancour, Province of Québec, G9H 2V8. For greater certainty, the Purchased Assets shall not include any personal or movable property.

The whole as it is currently found with all that is or will be incorporated, attached, joined or united by accession to this immovable and that is considered an immovable under the law.

~~2. [Intentionally Deleted.]~~

~~2.~~ 3. Solar Intellectual Property Leased Property

~~(a) See attached Silicium Bécancour Inc. IP Portfolio Summary regarding patents and patent applications.~~

~~(b) Rights contained in Joint Development Agreement by and between Bécancour Silicon Inc. and AMG Conversion Ltd., dated July 20, 2009.~~

~~(c) [Intentionally Deleted.]~~

~~(d) Intellectual Property developed by Bécancour Silicon Inc. relating to: (i) melting and casting of solar grade silicon; (ii) casting of solar grade silicon with gallium doping; (iii) blending of solar grade silicon with polysilicon; (iv) processing of solar grade silicon wafers into cells; and (v) theoretical and empirical relationships between solar grade silicon dopant concentration as measured by resistivity and solar grade silicon dopant concentration as measured by ICP MS.~~

~~4. Solar Accounts Receivables~~

~~5. All Inventory Solar~~

~~6. See Schedule H Solar Equipment~~

Lease dated September 30, 2010 between Québec Silicon General Partner Inc. and Bécancour Silicon Inc., in respect of office premises at 6500 Yvon Trudeau, Bécancour, Québec, for a term expiring September 30, 2040.

For greater certainty, no personal property or movable property leased by BSI or subject to a registered movable hypothec created thereon under Article 2954 of the Civil Code of Québec upon the acquisition of such movable asset or subject to a title retention arrangement in favour of the vendor thereof shall be included in the Purchased Assets.

**Schedule C**  
**Intentionally Deleted**



**Schedule D**  
**Bidding Procedures Order** [Intentionally Deleted](#)

**Schedule ~~EE~~  
Permitted Encumbrances**

1. Other than for any restriction in respect of any of the transactions contemplated by this Agreement, the transfer restrictions on the shares in the capital of Québec Silicon General Partner Inc. pursuant to the Articles of Incorporation of Québec Silicon General Partner Inc.
2. Other than for any restriction in respect of any of the transactions contemplated by this Agreement, the transfer restrictions on the shares in the capital of Québec Silicon General Partner Inc. pursuant to the Shareholders Agreement between all the Shareholders of Québec Silicon General Partner Inc. dated October 1, 2010.
3. Other than for any restriction in respect of any of the transactions contemplated by this Agreement, the transfer restrictions on the units of Québec Silicon Limited Partnership pursuant to the Amended and Restated Limited Partnership Agreement between Dow Corning Corporation and Québec Silicon General Partners Inc. dated October 1, 2010.
- ~~4. Any limitation to the right of ownership associated with the nominee agreement between BSI and Québec Silicon General Partner Inc. relating to the HP2 property located at 6400 Yvon-Trudeau, Bécancour, Québec.~~
4. ~~5.~~ The right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any grant or permit acquired by the Vendors or any statutory provision to terminate any such grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.
5. ~~6.~~ The reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown.
6. ~~7.~~ Servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons, including without limitation:
  - (a) ~~a.~~ *a servitude of passage by foot and vehicles against lot 3 417 110 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2), in favour of the HP1 Property, the HP2 Property and the Facility, created by virtue of a Deed of Transfer registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under number 94 002;*
  - (b) ~~b.~~ *a servitude in favour of the HP1 Property, the HP2 Property and the Facility (with greater extent) to construct railroad tracks on lot 708-30, now known as lot 3 294 053 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2) to connect railroad lines to the main lines of the Canadian National Railway Company situated on lot 708-12, now known as lot 3 417 065 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2) created by virtue of a Deed of Transfer registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under number 94 002;*
  - (c) ~~c.~~ *rights and obligations resulting from the Deed of Transfer registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under number 94 002, including, without limitation, a right of access to and use of all*

*roadways and other public facilities of the infrastructure of the Central Quebec Industrial Park at Bécancour, rights of access and use of the harbour and dock facilities and the right of storage on the dock facilities in the Central Quebec Industrial Park at Bécancour, a right to erect a fence, a right to extend a private set of railroad tracks and a right to make available by means of water mains a supply of water sufficient to meet the needs;*

~~d. a servitude in favour of Hydro-Québec against the HP1 Property registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under numbers 108 397 and 110 709; and~~

~~(d) e. any and all servitudes to be granted in favour of and against the HP2 Property and the Facility by destination of proprietor and to be registered once executed.~~

- ~~7. 8. Encroachments~~ Minor encroachments disclosed by and any errors or omissions existing in surveys of the ~~Purchased Solar Grade Silicon Assets—Owned~~ HP2 Property (described in Schedule B) or neighbouring properties and any title defect, encroachment or breach of a zoning, land-use or building by-law or any other Applicable Law, by-law or regulation which might be disclosed by a more up-to-date survey of the ~~Purchased Solar Grade Silicon Assets—Owned~~ HP2 Property (described in Schedule B) and survey matters generally, provided that the same does not materially impair the use or materially affect the value of the ~~Purchased Solar Grade Silicon Assets—Owned~~ HP2 Property (described in Schedule B) for the purposes of the Ordinary Course of Business.
- ~~8. 9. Title~~ Minor title defects or irregularities which are of minor nature, encroachments, easements, rights-of-way, rights to use, servitudes or similar interests, including, without restricting the generality of the foregoing, any remarks, comments, reserves, information, comments, issues, errors or omissions contained in title opinions, summaries of limited subsearch and/or ~~“note de service”~~ of the ~~Purchased Solar Grade Silicon Assets—Owned~~ HP2 Property (described in Schedule B) or which might be disclosed by more up-to-date title opinions, which are of minor nature provided that same does not materially impair the use or materially affect the value of the ~~Purchased Solar Grade Silicon Assets—Owned~~ HP2 Property (described in Schedule B) for the purposes of the Ordinary Course of Business.
- ~~9. 10.~~ Statutory or inchoate liens which relate to obligations not yet due on account of taxes, local improvement rates or utilities.

~~Schedule~~ ~~Schedule FF~~  
QSLP Contracts

The Contracts relating to the formation, transfer of assets into and governance of QSGP and QSLP:

1. ~~[Intentionally Deleted.]~~ [Framework Agreement](#)
2. ~~[Intentionally Deleted.]~~ [Business Transfer Agreement](#)
3. ~~[Intentionally Deleted.]~~ [Intellectual Property Assignment Agreement dated September 30, 2010 between Bécancour Silicon Inc. and Québec Silicon Limited Partnership.](#)
4. ~~[Intentionally Deleted.]~~ [Pension Transfer Agreement dated September 30, 2010 among Bécancour Silicon Inc., Québec Silicon Limited Partnership, by its general partner Québec Silicon General Partner Inc., and Dow Corning Corporation.](#)
5. Amended and Restated Limited Partnership Agreement dated October 1, 2010 by and between Bécancour Silicon Inc., Dow Corning Canada Inc. and Québec Silicon General Partner Inc., as amended by the First Amendment thereto dated October 14, 2010.
6. Shareholders Agreement dated October 1, 2010 by and between Bécancour Silicon Inc., Dow Corning Netherlands, B.V. (now known as DC Global Holdings S.a.r.l.) and Québec Silicon General Partner Inc.

**Schedule ~~GG~~**  
**Silicon Metal Contracts**

Contracts relating solely to the Purchased Silicon Metal Assets:

- ~~1. Long Term Supply Agreement dated June 1, 2011, and effective January 1, 2011, between Bécancour Silicon Inc. and Wacker Chemie AG, as amended by Amendment No. 1 thereto dated September 6, 2011.~~
  
1. ~~2.~~ Output and Supply Agreement among Québec Silicon Limited Partnership, Bécancour Silicon Inc. and Dow Corning Corporation dated October 1, 2010, as amended by: (i) Amendment No. 1 dated November 16, 2010, effective as of October 1, 2010; (ii) Amendment No. 2 dated November 1, 2011, effective as of October 1, 2010; and (iii) Amendment No. 3 dated November 1, 2011, effective as of October 20, 2011.
  
- ~~3. [Intentionally Deleted.]~~
  
- ~~4. [Intentionally Deleted.]~~
  
- ~~5. [Intentionally Deleted.]~~
  
- ~~6. [Intentionally Deleted.]~~
  
- ~~7. [Intentionally Deleted.]~~
  
2. Agency Services Agreement among Bécancour Silicon Inc. and Québec Silicon Limited Partnership dated September 30, 2010.
  
3. ~~8.~~ Purchase Order dated November 17, 2011 between Alliages Zabo Inc. and Silicium Bécancour Inc. for the sale and delivery of silicon metal.
  
4. ~~9.~~ Purchase Order dated December 13, 2011 between Cable Alcan and Bécancour Silicon Inc. for the sale and delivery silicon metal.
  
- ~~10. [Intentionally Deleted.]~~
  
5. ~~11.~~ Purchase Order dated January 9, 2012 between GNP Ceramics, LLC and Bécancour Silicon Inc. for the sale and delivery of silicon metal.

**Schedule H**  
**Solar Equipment**  
**Intentionally Deleted**

- ~~1. The machinery, equipment, supplies and accessories, and any of the parts and components thereof, relating to the Purchased Solar Grade Silicon Assets, and all other machinery equipment, supplies and accessories including parts and components thereof, in each case relating to the Timminco Solar division of BSI and located at the HP1 Property or at the HP2 Property or servicing the HP1 Property or the HP2 Property (described in Schedule B), which for greater certainty shall not include the equipment owned by AMG Conversion Ltd. located in the ingoting facility on the HP1 Property or at the HP2 Property or servicing the HP2 Property and/or the HP1 Property.~~
- ~~2. See attached Bécancour Silicon Inc. Schedule of Solar Fixed Assets.~~
- ~~1.~~

**Schedule H**  
**Monthly Reimbursement**

The minimum aggregate amount of silicon metal that QSLP shall have produced and delivered to DCC at BSI's request in satisfaction of BSI's obligations to DCC in respect of the Shortfall shall be no less than the amount set forth in the table below that corresponds to the month end period that is no less than fifteen (15) days prior to the Closing.

<b>Month</b>	<b>Amount (in metric tons)</b>
March 31, 2012	3,000
April, 30, 2012	3,250
May 31, 2012	3,500
June 30, 2012*	3,750
July 31, 2012*	4,167
August 31, 2012*	4,584
September 30, 2012*	4,941
October 31, 2012*	5,108
November 30, 2012*	5,275
December 31, 2012*	5,440

~~\*Closing can only occur in the month following this date if agreed in writing by the Parties  
hereto~~

**Schedule J**  
**Solar Grade Silicon Contracts, J**  
**Intentionally Deleted**

~~The Contracts relating solely to the Purchased Solar Grade Silicon Assets:~~

- ~~1. — Purchase Order dated November 17, 2011 between Alliages Zabo Inc. and Silicium Bécancour Inc. for the sale and delivery of silicon metal.~~
- ~~2. — [Intentionally Deleted.]~~
- ~~3. — [Intentionally Deleted.]~~
- ~~4. — [Intentionally Deleted.]~~
- ~~5. — [Intentionally Deleted.]~~
- ~~6. — [Intentionally Deleted.]~~
- ~~7. — Lease Agreement Re: Dust Collector No. 21 and Duct (44") connecting the Furnaces No. 2 located on the Facility to the Dust Collector No. 21 dated [February 28, 2012] between Québec Silicon Limited Partnership and Bécancour Silicon Inc.~~
- ~~8. — [Intentionally Deleted.]~~
- ~~9. — [Intentionally Deleted.]~~
- ~~10. — [Intentionally Deleted.]~~
- ~~11. — [Intentionally Deleted.]~~
- ~~12. — [Intentionally Deleted.]~~
- ~~13. — [Intentionally Deleted.]~~
- ~~14. — [Intentionally Deleted.]~~
- ~~15. — [Intentionally Deleted.]~~
- ~~16. — [Intentionally Deleted.]~~



## Schedule ~~KK~~ Consents and Approvals

The consents, approvals, notifications or waivers from, and filings with, third parties (including any Governmental Authority) which are effective as of the Closing Time.

### *Consents and Approvals related to the Purchased Silicon Metal Assets*

1. DCC Consent
2. ~~Long Term Supply Agreement dated June 1, 2011, and effective January 1, 2011, between Bécancour Silicon Inc. and Wacker Chemie AG, as amended by Amendment No. 1 thereto dated September 6, 2011. This agreement is not assignable by either party without the prior written consent of the other.~~ [Antitrust Clearances](#)

### *Consents and Approvals related to the ~~Purchased Solar Grade Silicon Assets~~ [Real Property](#)*

1. ~~Intentionally Deleted.~~
2. ~~Nominee Agreement dated September 30, 2010 between Bécancour Silicon Inc. and Québec Silicon General Partner Inc., in respect of the HP2 Property.~~
3. ~~Intentionally Deleted.~~
4. ~~Intentionally Deleted.~~
5. ~~Intentionally Deleted.~~
6. ~~Certificates of Authorization and Authorizations for the HP1 Property and the HP2 Property issued~~ [Approval and issuance](#) by the Quebec Ministry of Sustainable Development, Environment and Parks (“MSDEP”) pursuant to the *Environment Quality Act* ~~cannot be assigned without the approval and issuance by the MSDEP of a certificate of~~ [the assignment or modification of Certificates of Authorization and Authorizations for the HP2 Property to the Purchaser, to the extent such Certificates of Authorization and Authorizations are required by the Purchaser for the conduct of operations at the HP2 Property.](#)

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**Schedule EL**  
**Estimated BSI Working Capital Statement**

<b>WC Assets (CAD 000s)</b>	<b>5/31/2012</b>
Accounts Receivable – Si Metal	933
	-
Prepaid Expenses	10
Inventory – Si Metal	2,060
Inventory – Packing Supplies	1,506
<b><u>WC Assets</u></b>	<b>4,509</b>

## Schedule M Sample QSLP Working Capital Statement

QSLP Net Working Capital																						
	2010												2011					2012 Est.				
	D	J	F	M	A	M	J	J	A	S	O	N	D	J (Act.)	F	M	A	M	J			
Cash	343	2,783	4,309	7,339	3,270	3,348	2,983	1,918	109	4,451	1,561	-	1,907	880	1,000	1,000	1,000	1,000	1,000			
AR - Trade																						
3rd Party - by-products							579	712	771	861	724	848	1,414	1,171	859	781	761	757	1,709			
Affiliated - DCC and BSI	15,047	12,875	12,893	10,749	10,933	10,255	11,403	12,340	15,305	12,929	12,296	12,077	6,743	8,543	10,446	10,163	9,719	8,702	9,090			
AR - Other																						
3rd Party - sales taxes	1,233	1,138	1,032	1,130	1,175	1,256	1,436	1,414	1,353	1,375	1,591	1,466	2,102	1,839	1,572	1,320	1,320	1,320	1,320			
Affiliated - shared svcs, True-ups	5,202	4,705	4,348	3,707	2,763	2,823	5,502	4,923	5,331	3,420	4,747	4,950	3,745	3,190	3,195	666	746	826	233			
BSI Ind (PRB)	37	37	37	37	37	37	37	37	37	37	37	37	(0)	-	-	-	-	-	-			
Total AR	21,519	18,755	18,309	15,624	14,908	14,371	18,957	19,426	22,796	18,622	19,396	19,378	14,004	14,743	16,072	12,930	12,547	11,405	12,352			
Inventory																						
FG - DCC and by-products	1,034	1,738	2,076	2,739	2,618	1,903	2,028	2,706	2,335	2,261	2,247	2,582	2,803	3,598	2,531	2,749	2,968	3,186	2,573			
Raw	10,529	9,452	8,713	7,670	6,504	7,587	7,777	8,959	10,200	12,206	13,854	15,377	13,489	11,272	9,486	11,041	9,733	11,317	9,800			
Other - stores and packing	3,284	3,325	3,438	3,423	3,513	3,068	2,664	3,153	3,073	3,260	3,208	3,544	3,628	3,679	3,625	3,625	3,625	3,625	3,625			
FG In transit													151	-	-	-	-	-	-			
Total Inventory	14,847	14,516	14,226	13,832	12,635	12,559	12,469	14,818	15,617	17,727	19,310	21,504	20,072	18,549	15,642	17,416	16,326	18,148	15,999			
Prepaid - Insurance and taxes	166	494	410	495	457	510	539	380	341	292	248	71	86	477	538	500	471	412	395			
Total Current Assets	38,876	36,548	37,255	37,290	31,270	30,788	34,948	36,541	38,864	41,092	40,515	40,953	38,069	34,649	33,252	31,846	30,344	30,985	29,745			
AP																						
3rd Party	8,990	6,962	7,073	7,020	6,571	7,284	7,503	9,557	9,753	8,837	10,585	9,768	10,860	8,816	8,007	7,378	7,665	8,024	7,702			
Affiliated	1,170	1,371	874	909	522	510	387	314	596	1,053	362	425	254	215	234	296	160	210	260			
Accrued																						
3rd Party	3,352	3,632	4,358	3,603	3,653	4,750	3,929	3,922	5,271	6,662	4,711	6,577	4,363	4,842	4,879	4,483	4,467	4,143	4,219			
Affiliated																						
Total Current Liabilities before line of credit	13,512	11,965	12,905	11,531	10,744	13,044	11,820	13,793	15,620	16,552	15,658	16,770	15,477	13,873	13,120	12,157	12,292	12,377	12,181			
DC line of credit	10,000	10,000	10,000	10,000	7,500	7,500	10,000	9,000	9,000	9,000	9,000	10,000	14,500	14,500	13,000	12,100	10,000	9,800	8,100			
Total Current Liabilities after line of credit	23,512	21,965	22,905	21,531	18,244	20,544	21,820	22,793	24,620	25,552	24,658	26,770	29,977	28,373	26,120	24,257	22,292	22,177	20,281			
NWC	13,364	14,583	14,950	15,759	13,027	10,244	13,128	13,748	14,244	15,540	15,857	14,183	6,091	6,276	7,133	7,589	8,051	8,808	9,465			
Current Shareholder Notes Payable (BSI and DCC)	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	-	-	-	-	-	-	-	-			
NWC after Note Payable	10,864	12,083	12,450	10,759	10,527	7,744	10,628	11,248	11,744	13,040	13,357	14,183	6,091	6,276	7,133	7,589	8,051	8,808	9,465			
Forecasted CAPEX																400	395	100	200			
CCAA Provision (Note 7)																						
AR - Trade																						
Affiliated - DCC and BSI													7,341	510								
AR - Other																						
Affiliated - shared svcs, True-ups													2,277	246								
BSI Ind (PRB)													124	-								
AP																						
Affiliated													(811)	6								
Total Provision														8,331	762							
NWC prior to provision due to BSI CCAA filing														15,022	7,038							

### Notes

- 1 Up to end of June 2011, QSLP was paying Hydro Quebec weekly instead of monthly (impact of \$1.4M in AP)
- 2 Feb - June 2012 production volume, sales volume, and cost according to budget
- 3 Sales of by-product according to budget (Feb-June 2012)
- 4 Current Payment terms of net 45 days for DCC
- 5 Current Payment terms of net 3-4 days to BSI (invoice issued bi-weekly)
- 6 Capex May- June 2012 - includes \$400 in payments for 2011
- 7 Due to BSI CCAA filing, a provision of \$5.9M has been recorded in QSLP's book as of December 31st, 2011 and \$0.8M has been recorded as of January 31st, 2012 on recommendation of external auditor Deloitte

Schedule N  
Access Agreement Term Sheet

ACCESS AGREEMENT TERM SHEET

April 24, 2012

Timminco Limited (“Timminco”) and Bécancour Silicon Inc. (“BSI” and together with Timminco, the “Timminco Entities”) filed for protection under the *Companies’ Creditors Arrangement Act* (Canada) and FTI Consulting Canada Inc. was appointed monitor (the “Monitor”) pursuant to an Order of the Ontario Superior Court of Justice [Commercial List] (the “Court”) dated January 3, 2012. Pursuant to a further Order of the Court dated March 9, 2012, the Court authorized certain bidding procedures (the “Bidding Procedures”) for the solicitation of offers for the acquisition of some or all of the Timminco Entities assets.

Assets on which the Timminco Entities have received offers in accordance with the Bidding Procedures include BSI’s silicon production facility known as “HP2” located in Bécancour, Quebec. Offers have also been received for certain equipment identified as being located in HP2 in the *Schedule of Solar Fixed Assets* attached to Schedule H of the Stalking Horse Agreement (the “HP2 Equipment”) from parties not offering to acquire HP2 itself. Access to HP2 is only available through property owned by Quebec Silicon General Partner Inc. as nominee for Quebec Silicon Limited Partnership (“OSLP”). Accordingly, any party not purchasing HP2 but purchasing certain HP2 Equipment will require access to HP2 to dismantle and remove any purchased HP2 Equipment. The following is a summary of key terms on with the Timminco Entities, in consultation with the Monitor, believe is a reasonable basis on which an access agreement between and among any purchaser of any HP2 Equipment (the “Purchaser”), OSLP and the purchaser of HP2, if any (such purchaser or BSI, as the case may be, is hereinafter referred to as the “Owner”) could be based.

Key Terms:

1. Access. QSLP and the Owner (the “Counterparties”) shall grant, at no additional charge or fee, access to HP2 to the Purchaser and its designated personnel for a period of 3 months following the closing of the transaction (or such other period as may be agreed to by the parties) (the “Access Period”) for the purposes of dismantling and removing any purchased HP2 Equipment in accordance with the Plan (as defined below) and the terms of an access agreement to be entered into by the Purchaser and the Counterparties (the “Access Agreement”). A material breach of the obligations of the Purchaser under the Access Agreement, not cured within an agreed upon time frame, will result in the termination of the access rights granted to the Purchaser.
2. Dismantling and Removal Plan. The Purchaser shall submit to the Counterparties, prior to dismantling and removing of any purchased HP2 Equipment, a plan (the “Plan”), in form and substance reasonably satisfactory to the Counterparties, for the dismantling and removal of the purchased HP2 Equipment, which will include a timetable, a designated representative in charge, a list of Purchaser personnel who will require access to HP2 and such other technical, logistical and/or operational details as may be appropriate including specific access requirements of the Purchaser during normal business hours of HP2. The Purchaser may update the Plan from time to time, with such updates to be reasonably satisfactory to the

- Counterparties. The Purchaser will covenant to comply with the terms of the Plan in all material respects.
3. **Supervision.** A representative of the Owner (including the Monitor to the extent BSI remains the Owner) shall be entitled, at the Owner's option, to attend, supervise and observe any access to HP2, including any dismantling and/or removal of any HP2 Equipment.
  4. **Standard of Care.** The removal of any HP2 Equipment shall be done in a professional, competent and careful manner, by professionals or tradespersons fully qualified to dismantle and remove such equipment.
  5. **Indemnity.** The Purchaser shall indemnify and hold each Counterparty harmless from and against any and claims, damage, loss or harm caused by, or resulting from, the Purchaser breaching its obligations under the Access Agreement.
  6. **Costs.** The Purchaser shall be responsible for all costs and expenses associated with insuring, maintaining, up-keeping, dismantling and removing any HP2 Equipment.
  7. **General Liability Insurance.** The Purchaser shall carry general liability insurance from a recognized insurance provider, in an amount reasonably satisfactory to the Counterparties.
  8. **No Disruption.** The dismantling and removal of any HP2 Equipment will be done in such a manner so as not to unduly disrupt, hinder or delay operations at HP2 or any other personnel of the Owner or QSLP at such location or any other property owned by QSLP.
  9. **Broom Swept Condition.** The Purchaser shall leave the areas of HP2 from which it has dismantled and removed HP2 Equipment in a clean, broom swept and safe condition at its own expense. Without limiting the foregoing, prior to the expiry of the Access Period, the Purchaser shall:
    - disconnect all electrical wires and/or air/water/other lines connected to any purchased HP2 Equipment and cap to the buss bar/nearest wall, as appropriate;
    - "blow off" all bolts, shear all anchor bolts or fasteners flush to the floor;
    - remove all oil and other lubricants and fluids from purchased HP2 Equipment and subsequently dispose of same;
    - clean all pits created by the removal of HP2 Equipment of oil and other lubricants and fluids caused or created by the removal of any HP2 Equipment; and
    - repair all holes in the floor, walls or roof created by the Purchaser by the removal of any HP2 Equipment and repair any all damage caused by the Purchaser arising from or in connection with the access rights granted under the Access Agreement.
  10. **Other Terms.** The Access Agreement will be subject to such other reasonable and customary representation, warranties and covenants as typically found in agreements of this nature.