

# United States Securities and Exchange Commission

Washington, DC 20549

## FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2019

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-16091

## PolyOne Corporation

(Exact name of registrant as specified in its charter)

**Ohio**

(State or other jurisdiction  
of incorporation or organization)

**33587 Walker Road,  
Avon Lake, Ohio**

(Address of principal executive offices)

**34-1730488**

(I.R.S. Employer Identification No.)

**44012**

(Zip Code)

Registrant's telephone number, including area code (440) 930-1000

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Shares, par value \$.01 per share	POL	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the registrant's outstanding common shares held by non-affiliates on June 28, 2019, determined using a per share closing price on that date of \$31.39, as quoted on the New York Stock Exchange, was \$2.4 billion.

The number of shares of common shares outstanding as of February 7, 2020 was 92,281,940.

### DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Annual Report on Form 10-K incorporates by reference certain information from the registrant's definitive Proxy Statement with respect to the 2020 Annual Meeting of Shareholders.

**POLYONE CORPORATION**

## PART I

### CAUTIONARY NOTE ON FORWARD-LOOKING STATEMENTS

In this Annual Report on Form 10-K, statements that are not reported financial results or other historical information are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements give current expectations or forecasts of future events and are not guarantees of future performance. They are based on management's expectations that involve a number of business risks and uncertainties, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements. You can identify these statements by the fact that they do not relate strictly to historic or current facts. They use words such as “will,” “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe,” and other words and terms of similar meaning in connection with any discussion of future operating or financial condition, performance and/or sales. In particular, these include statements relating to future actions; prospective changes in raw material costs, product pricing or product demand; future performance; estimated capital expenditures; results of current and anticipated market conditions and market strategies; sales efforts; expenses; the outcome of contingencies such as legal proceedings and environmental liabilities; and financial results. Factors that could cause actual results to differ materially from those implied by these forward-looking statements include, but are not limited to:

- disruptions, uncertainty or volatility in the credit markets that could adversely impact the availability of credit already arranged and the availability and cost of credit in the future;
- the effect on foreign operations of currency fluctuations, tariffs and other political, economic and regulatory risks;
- changes in polymer consumption growth rates and laws and regulations regarding plastics in jurisdictions where we conduct business;
- fluctuations in raw material prices, quality and supply, and in energy prices and supply;
- production outages or material costs associated with scheduled or unscheduled maintenance programs;
- unanticipated developments that could occur with respect to contingencies such as litigation and environmental matters;
- an inability to achieve the anticipated financial benefit from initiatives related to acquisition integration, working capital reductions, cost reductions and employee productivity goals;
- our ability to pay regular quarterly cash dividends and the amounts and timing of any future dividends;
- information systems failures and cyberattacks;
- our ability to consummate and successfully integrate acquisitions, including the acquisition of Clariant AG's (Clariant) masterbatch business (the Clariant Masterbatch Acquisition) and Clariant Chemicals (India) Limited's (Clariant India) masterbatch business (the businesses are collectively referred to as Clariant Masterbatch and the acquisitions are collectively referred to as the Clariant Acquisition);
- any material adverse changes in Clariant Masterbatch;
- the ability to obtain required regulatory or other third-party approvals and consents and otherwise consummate the Clariant Acquisition;
- our ability to achieve the strategic and other objectives relating to the Clariant Acquisition, including any expected synergies; and
- other factors described in this Annual Report on Form 10-K under Item 1A, “Risk Factors.”

We cannot guarantee that any forward-looking statement will be realized, although we believe we have been prudent in our plans and assumptions. Achievement of future results is subject to risks, uncertainties and assumptions. Should known or unknown risks or uncertainties materialize, or should underlying assumptions prove inaccurate, actual results could vary materially from those anticipated, estimated or projected. Investors should bear this in mind as they consider forward-looking statements. We undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise, except as otherwise required by law. You are advised, however, to consult any further disclosures we make on related subjects in our reports on Forms 10-Q, 8-K and 10-K filed with the Securities and Exchange Commission (SEC). You should understand that it is not possible to predict or identify all risk factors. Consequently, you should not consider any such list to be a complete set of all potential risks or uncertainties.

## **ITEM 1. BUSINESS**

### **Business Overview**

We are a premier provider of specialized and sustainable polymer materials, and polymer services and solutions. Our products include specialty engineered materials, advanced composites, color and additive systems and polymer distribution. We are also a highly specialized developer and manufacturer of performance enhancing additives, liquid colorants and fluoropolymer and silicone colorants. Headquartered in Avon Lake, Ohio, we have employees at sales, manufacturing and distribution facilities across North America, South America, Europe and Asia. When used in this Annual Report on Form 10-K, the terms “we,” “us,” “our”, “PolyOne” and the “Company” mean PolyOne Corporation and its consolidated subsidiaries.

PolyOne was formed on August 31, 2000 from the consolidation of The Geon Company (Geon) and M.A. Hanna Company (Hanna). In 1948, B.F. Goodrich created a vinyl plastic division that was subsequently spun off through a public offering in 1993, creating The Geon Company, a separate publicly-held company. Hanna was formed in 1885 as a privately-held company and became publicly-held in 1927. In the mid-1980s, Hanna began to divest its historic mining and shipping businesses to focus on polymers. Hanna purchased its first polymer company in 1986 and completed its 26<sup>th</sup> polymer company acquisition in 2000.

PolyOne Corporation is incorporated in Ohio and headquartered in Avon Lake, Ohio. We currently employ approximately 5,600 people and have 61 manufacturing sites and eight distribution facilities in North America, South America, Europe and Asia. We offer more than 35,000 polymer solutions to over 10,000 customers across the globe. In 2019, we had sales of \$2.9 billion, approximately 45% of which were to customers outside the United States.

Using our formulation expertise and operational capabilities, we create an essential link between large chemical producers (our raw material suppliers) and designers, assemblers and processors of plastics (our customers). We believe that our role in the value chain continues to become more vital as our customers increasingly need reliable suppliers with a global reach and increasingly effective material-based solutions to improve their products' appeal, performance, differentiation, profitability and competitive advantage. Our goal is to provide customers with specialized and sustainable materials and solutions through our global footprint, broad market knowledge, technical expertise, product breadth, manufacturing operations, a fully integrated information technology network and raw material procurement leverage. Our end markets include healthcare, transportation, packaging, consumer, building and construction, industrial, wire and cable, electrical and electronics and appliance.

### **Polymer Industry Overview**

Polymers are a class of organic materials that are generally produced by converting natural gas or crude oil derivatives into monomers, such as ethylene, propylene, and styrene. These monomers are then polymerized into chains called polymers, or plastic resin, such as polyethylene and polypropylene, in their most basic forms. Large petrochemical companies, including some in the petroleum industry, produce a majority of the monomers and base resins because they have direct access to the raw materials needed for production. Monomers make up the majority of the variable cost of manufacturing the base resin. As a result, the cost of a base resin tends to move in tandem with the industry market prices for monomers and the cost of raw materials and energy used during production. Resin selling prices can move in tandem with costs, but are largely driven by supply and demand.

Thermoplastic polymers make up a substantial majority of the resin market and are characterized by their ability to be reshaped repeatedly into new forms after heat and pressure are applied. Thermoplastics offer versatility and a wide range of applications. The major types of thermoplastics include polyethylene, polypropylene, polystyrene, polyester and a range of specialized engineering resins. Each type of thermoplastic has unique qualities and characteristics that make it appropriate for use in a particular application. Thermoplastic composites include these base resins, but are combined with a structural filler such as glass, wood, carbon or polymer fibers to enhance strength, rigidity and structure. Further performance can be delivered through an engineered thermoplastic sheet or thick film, which may incorporate more than one resin formulation or composite in multiple layers to impart additional properties such as gas barrier, structural integrity and lightweighting.

Thermoplastics and polymer composites are found in a variety of end-use products and markets, including packaging, building and construction, wire and cable, transportation, medical, furniture and furnishings, durable goods, outdoor high performance equipment, electrical and electronics, adhesives, inks and coatings. Each type of thermoplastic resin has unique characteristics (such as flexibility, strength or durability) suitable for use in a particular end-use application. The packaging industry requires plastics that help keep food fresh and free of contamination while providing a variety of options for product display, and offering advantages in terms of weight and user-friendliness. In the wire and cable industry, thermoplastics and composites serve to protect by providing

electrical insulation, flame resistance, durability, water resistance, water swelling and color coding to engineered fibers, yarn products, wire coatings and connectors. In the transportation industry, plastic has proven to be durable, lightweight and corrosion resistant while offering fuel savings, design flexibility and high performance, often replacing traditional materials such as metal and glass. In the medical industry, plastics are used for a vast array of devices and equipment, including blood and intravenous bags, medical tubing, catheters, lead replacement for radiation shielding, clamps and connectors to bed frames, curtains and sheeting, electronic enclosures and equipment housings. In the outdoor high performance industry, plastic applications are used for components and colorants for all terrain vehicles and reinforced polymers are used for various outdoor equipment and gear. In the electronics industry, plastic enclosures and connectors not only enhance safety through electrical insulation, but thermally and electrically conductive plastics provide heat transferring, cooling, anti-static, electrostatic discharge, and electromagnetic shielding performance for critical applications including integrated circuit chip packaging.

Various additives can be formulated with a base resin and further engineered into a structure to provide them with greater versatility and performance. Polymer formulations and structures have advantages over metals, wood, rubber, glass and other traditional materials, which have resulted in the replacement of these materials across a wide spectrum of applications that range from automobile parts to construction materials. These specialized polymers offer advantages compared to traditional materials that include design freedom, processability, weight reduction, chemical resistance, flame retardance and lower cost. Plastics are renowned for their durability, aesthetics, ease of handling and recyclability.

### **PolyOne Segments**

We operate in three reportable segments: (1) Color, Additives and Inks; (2) Specialty Engineered Materials; and (3) Distribution. Previously, PolyOne had five reportable segments. However, as a result of the divestiture of the Designed Structures & Solutions segment (DSS) on July 19, 2017 and the divestiture of the Performance Products and Solutions segment (PP&S) on October 25, 2019, we have removed DSS and PP&S as separate operating segments and their results are presented as discontinued operations. Historical information has been retrospectively adjusted to reflect these changes. Please see Note 3, *Discontinued Operations*, to the accompanying consolidated financial statements for additional information.

Our segments are further detailed in Note 14, *Segment Information*, to the accompanying consolidated financial statements.

### **Competition**

The production of plastics and the manufacturing of custom and proprietary formulated color and additives systems for the plastics industry are highly competitive. Competition is based on service, performance, product innovation, product recognition, speed, delivery, quality and price. The relative importance of these factors varies among our products and services. We believe that we are the largest independent formulator of plastic materials and producer of custom and proprietary color and additive systems in the United States and Europe, with a growing presence in Asia and South America. Our competitors range from large international companies with broad product offerings to local independent custom producers whose focus is a specific market niche or product offering.

The distribution of polymer resin is also highly competitive. Speed, service, reputation, product line, brand recognition, delivery, quality and price are the principal factors affecting competition. We compete against other national independent resin distributors in North America, along with other regional distributors. Growth in the polymer distribution market is highly correlated with growth in the base polymer resins market. We believe that the strength of our company name and reputation, the broad range of product offerings from our suppliers and our speed and responsiveness, combined with the quality of products and agility of our distribution network, allow us to compete effectively.

### **Raw Materials**

The primary raw materials used by our manufacturing operations are polyolefin and other thermoplastic resins, TiO<sub>2</sub>, inorganic and organic pigments, all of which we believe are in adequate supply. See the discussion of risks associated with raw material supply and costs in Item 1A, "Risk Factors".

## **Patents and Trademarks**

We own and maintain a number of patents and trademarks in the United States and other key countries that contribute to our competitiveness in the markets we serve because they protect our inventions and product names against infringement by others. Patents exist for 20 years from filing date, and trademarks have an indefinite life based upon continued use. While we view our patents and trademarks to be valuable because of the broad scope of our products and services and brand recognition we enjoy, we do not believe that the loss or expiration of any single patent or trademark would have a material adverse effect on our results of operations, financial position or cash flows. Nevertheless, we have management processes designed to rigorously protect our inventions and trademarks.

## **Seasonality and Backlog**

Sales of our products and services are seasonal, as demand is generally slower in the first and fourth calendar quarters of the year. Because of the nature of our business, we do not believe that our backlog is a meaningful indicator of the level of our present or future business.

## **Working Capital Practices**

Our products are generally manufactured with a short turnaround time, and the scheduling of manufacturing activities from customer orders generally includes enough lead time to assure delivery of an adequate supply of raw materials. We offer payment terms to our customers that are competitive. We generally allow our customers to return merchandise if pre-agreed quality standards or specifications are not met; however, we employ quality assurance practices that seek to minimize customer returns. Our customer returns are immaterial.

## **Significant Customers**

No customer accounted for more than 3% of our consolidated revenues in 2019 and we do not believe we would suffer a material adverse effect to our consolidated financial statements if we were to lose any single customer.

## **Research and Development**

We have substantial technology and development capabilities. Our efforts are largely devoted to developing new product formulations to satisfy defined market needs, by providing quality technical services to evaluate alternative raw materials, assuring the continued success of our products for customer applications, providing technology to improve our products, processes and applications and providing support to our manufacturing plants for cost reduction, productivity and quality improvement programs. We operate research and development centers that support our commercial development activities and manufacturing operations. These facilities are equipped with state-of-the-art analytical, synthesis, polymer characterization and testing equipment, along with pilot plants and polymer manufacturing operations that simulate specific production processes that allow us to rapidly translate new technologies into new products. Our investment in product research and development was \$50.6 million in 2019, \$49.6 million in 2018 and \$45.3 million in 2017.

## **Methods of Distribution**

We sell products primarily through direct sales personnel, distributors, including our Distribution segment, and commissioned sales agents. We primarily use truck carriers to transport our products to customers, although some customers pick up product at our manufacturing facilities or warehouses. We also ship some of our manufactured products to customers by rail.

## **Employees**

In September 2018, the Great Place to Work Institute certified PolyOne as a Great Place to Work® in the U.S. based on a comparison of our employees' survey responses to those of employees at hundreds of other certified companies. We believe this reflects our commitment to better serving our associates, customers and communities, as well as further advancing our sustainability initiatives.

As of December 31, 2019, we employed approximately 5,600 people. Approximately 1% of our employees are represented by labor unions under collective bargaining agreements. We believe that relations with our employees are good, and we do not anticipate significant operating issues to occur as a result of current negotiations, or when we renegotiate collective bargaining agreements as they expire.

## Environmental, Health and Safety

We are subject to various environmental laws and regulations that apply to the production, use and sale of chemicals, emissions into the air, discharges into waterways and other releases of materials into the environment, and the generation, handling, storage, transportation, treatment and disposal of waste material. We endeavor to ensure the safe and lawful operation of our facilities in the manufacture and distribution of products, and we believe we are in material compliance with all applicable laws and regulations.

We maintain a disciplined environmental and occupational safety and health compliance program and conduct periodic internal and external regulatory audits at our facilities to identify and correct potential environmental exposures, including compliance matters and operational risk reduction opportunities. This effort can result in process or operational modifications, the installation of pollution control devices or cleaning up grounds or facilities. We believe that we are in material compliance with all applicable requirements.

We are strongly committed to safety as evidenced by our record-low injury incidence rate of 0.56 per 100 full-time workers per year in 2019 and 0.51 in 2018. The 2019 average injury incidence rate for our NAICS Code (326 Plastics and Rubber Products Manufacturing) was 3.8. We hold the American Chemistry Council's certification as a Responsible Care Management System® (RCMS) company. Certification was granted based on PolyOne's conformance to the RCMS's comprehensive environmental health, safety and security requirements. The RCMS certification affirms the importance PolyOne places on having world-class environmental, health, safety and security performance.

In January 2019, PolyOne, along with 29 other member companies, joined together as founding members of the Alliance to End Plastic Waste (AEPW). The AEPW has thus far committed over \$1.5 billion to help end plastic waste in the environment through investment in infrastructure, innovation, education, and clean-up activities. The AEPW intends to enable and bring to scale solutions to minimize and manage plastic waste and promote solutions for used plastics that move towards a circular economy. Our commitment to AEPW confirms the importance we place on being a global leader in all aspects of how we define sustainability: people, products, planet and performance. We have invested and are making important contributions in each, which are discussed in depth in our most recent Annual Report and Sustainability Report.

In our operations, we must comply with product-related governmental law and regulations affecting the plastics industry generally and also with content-specific law, regulations and non-governmental standards. We believe that compliance with current governmental laws and regulations and with non-governmental content-specific standards will not have a material adverse effect on our financial position, results of operations or cash flows. The risk of additional costs and liabilities, however, is inherent in certain plant operations and certain products produced at these plants, as is the case with other companies in the plastics industry. Therefore, we may incur additional costs or liabilities in the future. Other developments, such as increasingly strict environmental, safety and health laws, regulations and related enforcement policies, including those under the European Union Restriction of the Use of Certain Hazardous Substances Directive (RoHS), Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), the Dodd-Frank Wall Street Reform and Consumer Protection Act (covering Conflict Minerals), and the Consumer Product Safety Improvement Act, the implementation of additional content-specific standards, discovery of unknown conditions, and claims for damages to property, persons or natural resources resulting from plant emissions or products, could also result in additional costs or liabilities.

We expect 2020 cash environmental expenditures to approximate \$11 million. Refer to Note 11, *Commitments and Contingencies*, to the accompanying consolidated financial statements for further discussion of environmental matters.

## International Operations

Our international operations are subject to a variety of risks, including currency fluctuations and devaluations, exchange controls, currency restrictions and changes in local economic conditions. While the impact of these risks is difficult to predict, any one or more of them could adversely affect our future operations. For more information about the noted risks, see Item 1A. "Risk Factors". For more information about our international operations, see Note 14, *Segment Information*, to the accompanying consolidated financial statements.

## Where You Can Find Additional Information

Our principal executive offices are located at 33587 Walker Road, Avon Lake, Ohio 44012, and our telephone number is (440) 930-1000. We are subject to the information reporting requirements of the Securities Exchange Act of 1934 (the Exchange Act), and, in accordance with these requirements, we file annual, quarterly and other reports, proxy statements and other information with the SEC relating to our business, financial results and other matters. The reports, proxy statements and other information we file are available to the public at the SEC's website at <http://www.sec.gov>.

Our Internet address is [www.polyone.com](http://www.polyone.com). Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act are available, free of charge, on our website (select Investors and then SEC Filings) or upon written request, as soon as reasonably practicable after we electronically file or furnish them to the SEC. The contents of our website are not part of this Annual Report on Form 10-K, and the reference to our website does not constitute incorporation by reference into this Form 10-K of the information contained at that site.

## ITEM 1A. RISK FACTORS

The following are certain risk factors that could affect our business, results of operations, financial position or cash flows. These risk factors should be considered along with the forward-looking statements contained in this Annual Report on Form 10-K because these factors could cause our actual results or financial condition to differ materially from those projected in forward-looking statements. The following discussion is not an all-inclusive listing of risks, although we believe these are the more material risks that we face. If any of the following occur, our business, results of operations, financial position or cash flows could be adversely affected.

### Risks Relating to our Business

***Demand for and supply of our products and services may be adversely affected by several factors, some of which we cannot predict or control.***

Several factors may affect the demand for and supply of our products and services, including:

- economic downturns or other volatility in the significant end markets that we serve;
- product obsolescence or technological changes that unfavorably alter the value/cost proposition of our products and services;
- competition from existing and unforeseen polymer and non-polymer based products;
- declines in general economic conditions or reductions in industrial production growth rates, both domestically and globally, which could impact our customers' ability to pay amounts owed to us;
- changes in environmental regulations that would limit our ability to sell our products and services in specific markets;
- changes in laws and regulations regarding plastic materials; and
- inability to obtain raw materials or supply products to customers due to factors such as supplier work stoppages, supply shortages, plant outages or regulatory changes that may limit or prohibit overland transportation of certain hazardous materials and exogenous factors, like severe weather.

If any of these events occur, the demand for and supply of our products and services could suffer and potentially lead to asset impairment or otherwise adversely affect our results.

***Our manufacturing operations are subject to hazards and other risks associated with polymer production and the related storage and transportation of raw materials, products and wastes.***

The occurrence of an operating problem at our facilities (e.g., an explosion, a mechanical failure, a chemical spill or a discharge of toxic or hazardous substances) may have a material adverse effect on the productivity and profitability of a particular manufacturing or distribution facility or on our operations as a whole, during and after the period of these operating difficulties. Operating problems may cause personal injury and/or loss of life, customer attrition and severe damage to or destruction of property and equipment and environmental damage. We are subject to present claims and potential future claims with respect to workplace exposure, workers' compensation and other matters. Our property and casualty insurance, which we believe are of the types and in the amounts that are customary for the industry, may not fully insure us against all potential hazards that are incident to our business or otherwise could occur.

***Environmental, health and safety laws and regulations impact our operations and financial statements.***

Our operations on, and ownership of, real property are subject to environmental, health and safety laws and regulations at the national, state and local governmental levels (including, but not limited to, the RoHS and the Consumer Product Safety Improvement Act of 2008). The nature of our business exposes us to compliance costs and risks of liability under these laws and regulations due to the production, storage, transportation, recycling or disposal and/or sale of materials that can cause contamination and other harm to the environment or personal injury if they are improperly handled and released. Environmental compliance requirements imposed on us and our vendors may significantly increase the costs of these activities involving raw materials, energy, finished products and wastes. We may incur substantial costs, including fines, criminal or civil sanctions, damages, remediation costs or experience interruptions in our operations for violations of these laws.

***Our operations could be adversely affected by various risks inherent in conducting operations worldwide.***

Our operations are subject to risks; including, but not limited to, the following:

- changes in local government regulations and policies including, but not limited to duty or tariff restrictions, foreign currency exchange controls or monetary policy, repatriation of earnings, expropriation of property, investment limitations and tax policies;
- risks associated with the withdrawal of the United Kingdom (UK) from the European Union (EU), commonly known as "Brexit";
- political and economic instability and disruptions, including labor unrest, withdrawal or renegotiation of trade agreements, natural disasters, major public health issues, civil strife, acts of war, insurrection and terrorism;
- legislation that regulates the use of chemicals;
- disadvantages of competing against companies from countries that are not subject to U.S. laws and regulations, including the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act;
- compliance with international trade laws and regulations, including export control and economic sanctions;
- difficulties in staffing and managing multi-national operations;
- limitations on our ability to enforce legal rights and remedies;
- reduced protection of intellectual property rights;
- other risks arising out of foreign sovereignty over the areas where our operations are conducted; and
- increasingly complex laws and regulations concerning privacy and data security, including but not limited to the European Union's General Data Protection Regulation.

On June 23, 2016, the UK held a referendum in which UK voters approved an exit from the EU. The June 2016 referendum result, and the subsequent commencement of the official withdrawal process by the UK government in March 2017, has created uncertainties affecting business operations in the UK and the EU. The long-term nature of the UK's relationship with the EU is unclear and there is considerable uncertainty regarding when any relationship will be agreed and implemented. The long-term effects of Brexit will depend on any agreements the UK makes to retain access to EU markets, either during a transitional period or more permanently. Given the lack of comparable precedent, it is unclear what financial, trade and legal implications the withdrawal of the UK from the EU would have and how such withdrawal would affect us. It is possible that the withdrawal could, among other things, affect the legal and regulatory environments to which our businesses are subject, impact trade between the UK and the EU through potential restrictions on the free movement of goods and labor between the UK and the EU, create economic and political uncertainty in the region, and create other impediments to our ability to transact within and between the UK and EU. Less than 2% of our total consolidated sales originated in the UK and shipped to the EU for the year ended December 31, 2019.

In addition, we could be adversely affected by violations of the FCPA, UK Bribery Act and similar worldwide anti-bribery laws, as well as export controls and economic sanction laws. The FCPA, UK Bribery Act and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. Our policies mandate compliance with these laws. We operate in many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. We cannot assure you that our internal controls and procedures will always protect us from the reckless or criminal acts committed by our employees or agents. If we are found to be liable for FCPA, UK Bribery Act, export control or sanction violations, we could suffer from criminal or civil penalties or other sanctions, including loss of



export privileges or authorization needed to conduct aspects of our international business, which could have a material adverse effect on our business.

Any of these risks could have an adverse effect on our international operations by reducing demand for our products.

***Natural gas, electricity, fuel, logistics and raw material costs could cause volatility in our results.***

The cost of our natural gas, electricity, fuel, logistics and raw materials may not correlate with changes in the prices we receive for our products, either in the direction of the price change or in absolute magnitude. Natural gas and raw materials costs represent a substantial part of our manufacturing costs. Most of the raw materials we use are commodities and the price of each can fluctuate widely for a variety of reasons, including changes in availability because of major capacity additions or reductions or significant facility operating problems. Other external factors beyond our control can also cause fluctuations in raw materials prices, which could negatively impact demand for our products and cause volatility in our results.

***We face competition from other companies.***

We encounter competition in price, payment terms, delivery, service, performance, product innovation, product recognition and quality, depending on the product involved.

We expect that our competitors will continue to develop and introduce new and enhanced products, which could cause a decline in the market acceptance of our products. In addition, our competitors could cause a reduction in the selling prices of some of our products as a result of intensified price competition. Competitive pressures could also result in the loss of customers.

***Cybersecurity breaches, global information systems security threats and more sophisticated and targeted computer crime could pose a risk to our systems, networks and products, which could harm our business.***

We depend on integrated information systems to conduct our business, including communicating with employees and customers, ordering and managing materials from suppliers, shipping products to customers, and analyzing and reporting results of operations. In addition, we store sensitive data, including proprietary business information, intellectual property and confidential employee or other personal data, on our servers and databases. Cybersecurity breaches, global information systems security threats and more sophisticated and targeted computer crime pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data and communications. We continue to update our infrastructure, security tools, employee training and processes to protect against security incidents, including both external and internal threats, and to prevent their recurrence; however, our systems, networks and products may nevertheless be vulnerable to advanced persistent threats or other types of system failures. Depending on their nature and scope, such threats and system failures could potentially lead to the compromising of confidential information and communications, improper use of our systems and networks, manipulation and destruction of data, defective products, production downtimes and operational disruptions, which in turn could cause customers to cancel orders or otherwise adversely affect our reputation, competitiveness and results of operations.

***Disruptions in the global credit, financial and/or currency markets could limit our access to credit or otherwise harm our financial results, which could have a material adverse impact on our business.***

Global credit and financial markets experience volatility, including volatility in security prices, liquidity and credit availability, declining valuations of certain investments and significant changes in the capital and organizational structures of certain financial institutions. Market conditions may limit our ability to access the capital necessary to grow and maintain our business. Accordingly, we may be forced to delay raising capital, issue shorter tenors than we prefer or pay unattractive interest rates, which could increase our interest expense, decrease our profitability and significantly reduce our financial flexibility.

We are exposed to fluctuations in foreign currency exchange rates. Any significant change in the value of the currencies of the countries in which we do business against the U.S. dollar, whether precipitated by governmental monetary policy or otherwise, could affect our ability to sell products competitively and control our cost structure, which could have a material adverse effect on our business, financial condition and results of operations. For additional detail related to this risk, see Item 7A, "Quantitative and Qualitative Disclosures About Market Risk."

***The agreements governing our debt, including our revolving credit facility, term loan and other debt instruments, contain various covenants that limit our ability to take certain actions and in certain circumstances require us to meet financial maintenance tests, failure to comply with which could have a material adverse effect on us.***

The agreements governing our senior secured revolving credit facility and our senior secured term loan, and the indentures and credit agreements governing our other debt, contain a number of customary restrictive covenants that, among other things, limit our ability to: sell or otherwise transfer assets, including in a spin-off, incur additional debt or liens, consolidate or merge with any entity or transfer or sell all or substantially all of our assets, pay dividends or make certain other restricted payments, make investments, enter into transactions with affiliates, create dividend or other payment restrictions with respect to subsidiaries, make capital investments and alter the business we conduct.

In addition, our revolving credit facility requires us to comply under certain circumstances with specific financial tests, under which we are required to achieve certain or specific financial and operating results. Our ability to comply with these provisions may be affected by events beyond our control. A breach of any of these covenants would result in a default under such agreements and instruments, which in certain circumstances could be a default under all of these agreements and instruments. In the event of any default, our lenders could elect to declare all amounts borrowed under the agreements, together with accrued interest thereon, to be due and payable. In such event, we cannot assure that we would have sufficient assets to pay debt then outstanding under the agreements governing our debt.

Furthermore, certain of these agreements condition our ability to obtain additional borrowing capacity, engage in certain transactions or take certain other actions, on our achievement of certain or specific financial and operating results, although our failure to achieve such results would not result in a default under such agreements. Any future refinancing of our senior secured revolving credit facility or other debt may contain similar restrictive covenants.

***We have a significant amount of goodwill, and any future goodwill impairment charges could adversely impact our results of operations.***

As of December 31, 2019, we had goodwill of \$685.7 million. Additionally, in connection with our planned acquisition of Clariant Masterbatch, we expect that our goodwill will significantly increase. The future occurrence of a potential indicator of impairment, such as a significant adverse change in business climate, an adverse action or assessment by a regulator, unanticipated competition, a material negative change in relationships with customers, strategic decisions made in response to economic or competitive conditions, loss of key personnel or a more-likely-than-not expectation that a reporting unit or a significant portion of a reporting unit will be sold or disposed of, could result in goodwill impairment charges, which could adversely impact our results of operations. Based on our 2019 goodwill impairment test, performed as of October 1, 2019, no reporting units were identified as being at risk of future impairment. For additional information, see Note 4, *Goodwill and Intangible Assets*, to the accompanying consolidated financial statements and “Critical Accounting Policies and Estimates” included in Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

#### **Risks Relating to our Planned Acquisition of Clariant Masterbatch**

***The Clariant Acquisition may not occur at all or may not occur in the expected time frame, which may negatively impact our share price.***

On December 19, 2019, we entered into a definitive share purchase agreement (the Agreement) with Clariant and a definitive business transfer agreement (the BTA) with Clariant India, pursuant to which, among other things, and subject to the satisfaction or waiver of specified conditions, we will acquire Clariant Masterbatch.

The consummation of the Clariant Acquisition is not assured. The Clariant Acquisition is subject to risks and uncertainties, including the risks that the necessary regulatory approvals will not be obtained, the risk that PolyOne may be required to divest certain businesses or assets in connection with the Clariant Acquisition, or that other closing conditions will not be satisfied. We cannot predict whether and when such conditions will be required or satisfied.

***We may not realize the growth opportunities and cost synergies that are anticipated from the Clariant Acquisition or may experience other difficulties integrating Clariant Masterbatch.***

The benefits that are expected to result from the Clariant Acquisition will depend, in part, on our ability to realize the anticipated growth opportunities and cost synergies as a result of the Clariant Acquisition. Our success in realizing these growth opportunities and cost synergies, and the timing of this realization, depends on the successful integration of Clariant Masterbatch. There can be no assurance that we will successfully or cost-effectively integrate Clariant Masterbatch. The failure to do so could have an adverse effect on our business, financial condition, results of operations and cash flow.

***We will incur additional debt to complete the Clariant Acquisition. Our ability to generate cash to service this debt depends on many factors beyond our control.***

At December 31, 2019, we had total debt of approximately \$1,242.8 million. We expect to incur approximately \$650 million of debt to complete the Clariant Acquisition.

Our ability to make payments on our debt, fund our other liquidity needs, and make planned capital expenditures will depend on our ability to generate cash in the future. A significant portion of our operations are conducted by our subsidiaries. Our cash flows and our ability to service our indebtedness, including our ability to pay the interest on and principal of our debt when due, may be dependent upon cash dividends and other distributions or other transfers from our subsidiaries. Our ability to generate cash, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control.

The degree to which we are currently leveraged and will be leveraged following the consummation of the Clariant Acquisition could have important consequences for shareholders.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## ITEM 2. PROPERTIES

Headquartered in Avon Lake, Ohio, we operate globally with principal locations consisting of 61 manufacturing sites and eight distribution facilities in North America, South America, Europe and Asia. We own the majority of our manufacturing sites and lease our distribution facilities. We believe that the quality and production capacity of our facilities is sufficient to maintain our competitive position for the foreseeable future. The following table identifies the principal facilities of our segments:

Specialty Engineered Materials	Color, Additives and Inks		Distribution
1. Birmingham, Alabama	1. Glendale, Arizona	25. Tianjin, China	1. Rancho Cucamonga, California
2. Englewood, Colorado	2. Phoenix, Arizona	26. Tabor, Czech Republic	2. Chicago, Illinois
3. Montrose, Colorado	3. Fort Smith, Arkansas	27. Odkarby, Finland	3. Eagan, Minnesota
4. North Haven, Connecticut	4. Bethel, Connecticut	28. Cergy, France	4. Edison, New Jersey
5. McHenry, Illinois	5. Kennesaw, Georgia	29. Tossiat, France	5. Statesville, North Carolina
6. Winona, Minnesota	6. Elk Grove Village, Illinois	30. Diez, Germany	6. Elyria, Ohio
7. Hickory, North Carolina	7. La Porte, Indiana	31. Győr, Hungary	7. La Porte, Texas
8. Avon Lake, Ohio	8. St. Louis, Missouri	32. Pune, India	8. Brampton, Ontario, Canada
9. Hatfield, Pennsylvania	9. Lockport, New York	33. Milan, Italy	(8 Distribution Facilities)
10. Changzhou, China	10. Pineville, North Carolina	34. Toluca, Mexico	
11. Shenzhen, China	11. Berea, Ohio	35. Eindhoven, Netherlands	
12. Suzhou, China	12. Massillon, Ohio	36. Lima, Peru	
13. Gaggenau, Germany	13. North Baltimore, Ohio	37. Kutno, Poland	
14. Melle, Germany	14. Norwalk, Ohio	38. Jeddah, Saudi Arabia	
15. Leeuwarden, Netherlands	15. Lehigh, Pennsylvania	39. Alicante, Spain	
16. Barbastro, Spain	16. Mountain Top, Pennsylvania	40. Barcelona, Spain	
17. Istanbul, Turkey	17. Vonore, Tennessee	41. Pamplona, Spain	
18. Leek, United Kingdom	18. Assesse, Belgium	42. Bangkok, Thailand	
Shanghai, China (2)	19. Itupeva, Brazil	43. Knowsley, United Kingdom	
Pune, India (1)	20. Novo Hamburgo, Brazil	Shenzhen, China (1)	
Pamplona, Spain (1)	21. Pudong (Shanghai), China	Suwanee, Georgia (2)	
(18 Manufacturing Plants)	22. & 23. Shanghai, China (3)	Pamplona, Spain (2)	
	24. Suzhou, China	(43 Manufacturing Plants)	

- (1) Facility is not included in manufacturing plants total as it is also included as part of another segment.  
(2) Facility is not included in manufacturing plants total as it is a design center/lab.  
(3) There are two manufacturing plants located in Shanghai, China.

## ITEM 3. LEGAL PROCEEDINGS

Information regarding certain legal proceedings can be found in Note 11, *Commitments and Contingencies*, to the accompanying consolidated financial statements and is incorporated by reference herein.

## ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

## INFORMATION ABOUT OUR EXECUTIVE OFFICERS

Executive officers are elected by our Board of Directors to serve one-year terms. The following table lists the name of each person serving as an executive officer of the Company, their age, and position with the Company as of February 7, 2020.

Name	Age	Position
Robert M. Patterson	47	Chairman, President and Chief Executive Officer
Bradley C. Richardson	61	Executive Vice President, Chief Financial Officer
Michael A. Garratt	56	Senior Vice President, Chief Commercial Officer
J. Scott Horn	64	Senior Vice President, President of Distribution
Lisa K. Kunkle	51	Senior Vice President, General Counsel and Secretary
M. John Midea, Jr.	55	Senior Vice President, Global Operations and Process Improvement
Woon Keat Moh	46	Senior Vice President, President of Color, Additives and Inks
Chris L. Pederson	53	Senior Vice President, President of Specialty Engineered Materials
Joel R. Rathbun	47	Senior Vice President, Mergers & Acquisitions
João José San Martin Neto	59	Senior Vice President, Chief Human Resources Officer

Robert M. Patterson: Chairman, President and Chief Executive Officer, May 2016 to date. President and Chief Executive Officer, May 2014 to May 2016. Executive Vice President and Chief Operating Officer, March 2012 to May 2014. Executive Vice President and Chief Financial Officer, January 2011 to March 2012. Senior Vice President and Chief Financial Officer, May 2008 to January 2011. Vice President and Treasurer of Novelis, Inc. (an aluminum rolled products manufacturer) from 2007 to May 2008. Vice President, Controller and Chief Accounting Officer of Novelis from 2006 to 2007. Mr. Patterson served as Vice President and Segment Chief Financial Officer, Thermal and Flow Technology Segments of SPX Corporation (a multi-industry manufacturer and developer) from 2005 to 2006 and as Vice President and Chief Financial Officer, Cooling Technologies and Services of SPX from 2004 to 2005.

Bradley C. Richardson: Executive Vice President, Chief Financial Officer, November 2013 to date. Executive Vice President, Chief Financial Officer of Diebold, Incorporated (an integrated self-service delivery manufacturer for the banking industry and security systems) from November 2009 through November 2013. Executive Vice President, Corporate Strategy and Chief Financial Officer at Modine Manufacturing Company (a manufacturer of thermal management systems and components) from 2003 to 2009. Vice President, Performance Management Planning and Control, Chief Financial Officer, Upstream, BP Amoco, London, (a producer of oil, natural gas, and petro chemicals) from 2000 to 2003. Mr. Richardson serves on the Board of Directors of Brady Corporation and is Chair of its Audit Committee.

Michael A. Garratt: Senior Vice President, Chief Commercial Officer, April 2016 to date. Senior Vice President, President of Performance Products and Solutions, September 2013 to April 2016. President, Marmon Utility (a manufacturer of medium-high voltage utility, subsea and down-hole power cables and molded insulator systems) from March 2011 to September 2013. Chief Operating Officer, Excel Polymers (a custom thermoset rubber formulator) from November 2009 to December 2010. Vice President and General Manager - Americas Compounding and Performance Additives, Excel Polymers from March 2009 to November 2009. Vice President and General Manager - Industrial and Consumer, Excel Polymers from December 2005 to March 2009. From April 1996 to June 2005, Mr. Garratt worked for DuPont Dow Elastomers, a joint venture of Dupont and Dow (global manufacturers of engineered thermoset rubber and thermoplastic elastomer materials) in market development and product management positions, culminating in a regional commercial leadership role for Europe, the Middle East and Africa.

J. Scott Horn: Senior Vice President, President of Distribution, July 2017 to date. General Manager, Distribution, 2000 to July 2017. Vice President of M.A. Hanna Resin Distribution from 1995 to 2000, when PolyOne was formed. President, Fiberchem, Inc. (a leading regional distributor of thermoplastic and thermoset resins) from 1991, upon acquisition of Fiberchem by PolyOne's predecessor, M.A. Hanna Company, to 1995. Mr. Horn worked in various roles of increasing responsibility at Fiberchem from 1981 to 1991.

Lisa K. Kunkle: Senior Vice President, General Counsel and Secretary, May 2015 to date. Vice President, General Counsel and Secretary, August 2007 to May 2015, Assistant General Counsel February 2007 to August 2007. Partner, Jones Day (a global law firm) from January 2006 to February 2007. Associate, Jones Day from August 1995 to January 2006.

M. John Midea, Jr.: Senior Vice President, Global Operations and Process Improvement, February 2015 to date. President and Chief Executive Officer, Resco Products (a refractory products company) from August 2012 to October 2014. President and Chief Operating Officer, Ennis Traffic Safety Solutions (a traffic safety and infrastructure company) from June 2008 to July 2012. Vice President, North American - General Industrial, Valspar Corporation (a manufacturer of paints and coatings) from June 2007 to May 2008. Vice President and General Manager, Power Coatings, Valspar Corporation from February 2002 to June 2007.

Woon Keat Moh: Senior Vice President, President of Color, Additives and Inks, January 2020 to date. Vice President of Asia, January 2019 to December 2019. General Manager of Specialty Engineered Materials Asia, December 2014 to December 2018. Sales Director of Color and Additives Asia, February 2011 to November 2014. Business Development Manager, Color and Additives Asia, February 2010 to January 2011. From October 1999 to January 2010, Mr. Moh worked for Clariant AG (a global manufacturer of color and additives masterbatch) in various roles of increasing responsibility, culminating in a commercial leadership role in Southeast Asia. He also served as a technical sales executive for Bayer AG (a manufacturer of pigments, dyestuffs, additives, chemical auxiliaries for textile, leather, paper and plastic industry) with its Specialty Products division from 1997 to 1999.

Chris L. Pederson: Senior Vice President, President of Specialty Engineered Materials, November 2018 to date. Vice President, Strategy, Hexcel Corporation (a global leader in advanced composites technology) from March 2017 to November 2018. Vice President, Aerospace of Cytec Engineered Materials (a producer of specialty bonding adhesives and composite materials) from November 2009 to February 2016. Vice President, Research and Development of Cytec from January 2004 to November 2009. Mr. Pederson served as a Senior Engineer at Boeing (a global aerospace company) from 1992 to 2001.

Joel R. Rathbun: Senior Vice President, Mergers and Acquisitions, January 2016 to date. General Manager, Specialty Engineered Materials North America, February 2013 to January 2016. Vice President, Mergers and Acquisitions, June 2011 to February 2013. Mr. Rathbun served as Senior Vice President, Mergers and Acquisitions, Moelis & Company (an American global independent investment bank) from January 2008 to June 2011. He also served as Executive Director, Mergers and Acquisitions of CIBC World Markets (an investment bank in the domestic and international equity and debt capital markets) from 2006 to 2008.

João José San Martin Neto: Senior Vice President, Chief Human Resources Officer, November 2016 to date. Senior Director, Human Resources, Color, Additives and Inks, February 2013 to November 2016. Group Global Director, Human Resources, Engineered Products and Solutions from November 2012 to February 2013. Vice President Human Resources, Alcoa Power and Propulsion (a business unit of Alcoa Inc. specializing in titanium and aluminum castings) from May 2009 to October 2012. Vice President Human Resources, Alcoa Electrical & Electronic Solutions (a business unit of Alcoa Inc. specializing in the design, development and production of electrical and electronic distribution systems) from August 2003 to April 2009.

## PART II

### **ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Our common shares, \$0.01 par value per share, are traded on the New York Stock Exchange under the symbol "POL."

As of February 7, 2020, there were 1,704 holders of record of our common shares.

We currently have an authorized common share repurchase program. For the full year 2019, we repurchased 1 million common shares at a weighted average share price of \$26.91. During the three months ended December 31, 2019, we repurchased zero common shares as shown in the table below.

Period	Total Number of Shares Purchased	Weighted Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Program	Maximum Number of Shares that May Yet be Purchased Under the Program <sup>(1)</sup>
October 1 to October 31	—	\$ —	—	2,107,472
November 1 to November 30	—	\$ —	—	2,107,472
December 1 to December 31	—	—	—	2,107,472
Total	—	\$ —	—	

(1) On August 18, 2008, we announced that our Board of Directors approved a common share repurchase program authorizing PolyOne to purchase up to 10.0 million of its common shares. On each of October 11, 2011 and October 23, 2012, we further announced that our Board of Directors had increased the common share repurchase authorization by an additional 5.3 million shares and 13.2 million shares, respectively. On May 16, 2016, we announced that we would increase our share buyback by 7.3 million shares to 10.0 million shares. As of December 31, 2019, approximately 2.1 million shares remained available for purchase under these authorizations, which have no expiration. Purchases of common shares may be made by open market purchases or privately negotiated transactions and may be made pursuant to Rule 10b5-1 plans and accelerated share repurchases.

**ITEM 6. SELECTED FINANCIAL DATA**

Refer to Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," in Part II of this Annual Report on Form 10-K and the notes to our accompanying consolidated financial statements for additional information regarding the financial data presented below, including matters that might cause this data not to be indicative of our future financial condition, results of operations or cash flows.

(In millions, except per share data)	2019	2018	2017	2016	2015
Sales	\$ 2,862.7	\$ 2,881.0	\$ 2,590.3	\$ 2,349.4	\$ 2,313.0
Operating income	156.8	178.6	173.1	170.4	177.7
Net income from continuing operations	75.7	87.4	111.1	101.3	95.4
Net income from continuing operations attributable to PolyOne shareholders	75.5	87.7	111.0	101.5	95.3
Cash dividends declared per common share	\$ 0.788	\$ 0.720	\$ 0.580	\$ 0.495	\$ 0.420
Earnings per share from continuing operations attributable to PolyOne shareholders:					
Basic	\$ 0.98	\$ 1.10	\$ 1.36	\$ 1.21	\$ 1.09
Diluted	\$ 0.97	\$ 1.09	\$ 1.35	\$ 1.19	\$ 1.07
Total assets	\$ 3,273.3	\$ 2,723.3	\$ 2,705.3	\$ 2,735.8	\$ 2,620.3
Long-term debt	\$ 1,210.9	\$ 1,336.2	\$ 1,276.4	\$ 1,239.4	\$ 1,127.6



## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Overview**

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is designed to provide information that is supplemental to, and should be read together with, our consolidated financial statements and the accompanying notes contained in this Annual Report on Form 10-K. Information in this Item 7 is intended to assist the reader in obtaining an understanding of our consolidated financial statements, the changes in certain key items in those financial statements from year to year, the primary factors that accounted for those changes, and any known trends or uncertainties that we are aware of that may have a material effect on our future performance, as well as how certain accounting principles affect our consolidated financial statements. Unless otherwise noted, the discussion that follows includes a comparison of our results of operations, liquidity and capital resources, and cash flows for fiscal years 2019 and 2018. For a discussion of changes from fiscal year 2017 to fiscal year 2018, refer to [Management's Discussion and Analysis of Financial Condition and Results of Operations in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2018, filed as Exhibit 99.1 to our Current Report on Form 8-K, filed with the SEC on January 28, 2020.](#)

The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to these differences include, but are not limited to, those discussed below and elsewhere in this Annual Report on Form 10-K, particularly in "Cautionary Note on Forward-Looking Statements" and Item 1A, "Risk Factors."

### **Our Business**

We are a premier provider of specialized and sustainable polymer materials and polymer services and solutions. Our products include specialty engineered materials, advanced composites, color and additive systems and polymer distribution. We are also a highly specialized developer and manufacturer of performance enhancing additives, liquid colorants, and fluoropolymer and silicone colorants. Headquartered in Avon Lake, Ohio, with 2019 sales of \$2.9 billion, we have manufacturing sites and distribution facilities across North America, South America, Europe and Asia. We currently employ approximately 5,600 people and offer more than 35,000 polymer solutions to over 10,000 customers across the globe. We provide value to our customers through our ability to link our knowledge of polymers and formulation technology with our manufacturing and supply chain capabilities to provide value-added solutions to designers, assemblers and processors of plastics (our customers).

### **Key Challenges**

Our business faces macroeconomic exposures resulting from economic downturns, especially as it relates to cyclical markets such as building and construction, automotive and industrial. In addition, with 57% and 48% of our respective Color, Additives and Inks and Specialty Engineered Materials segments' sales outside the United States, we experience volatility related to foreign currency fluctuations, most significantly the Euro. Increasing profitability during periods of raw material price volatility is another challenge. Further, we strive to capitalize on the opportunity to accelerate development of products that meet a growing body of environmental laws and regulations such as lead and phthalate restrictions included in the RoHS and the Consumer Product Safety Improvement Act of 2008.

### **Strategy and Key Trends**

To address these challenges and achieve our vision, we have implemented a strategy with four core components: specialization, globalization, operational excellence and commercial excellence. Specialization differentiates us through products, services, technology and solutions that add value. Globalization allows us to service our customers with consistency wherever their operations might be around the world. Operational excellence empowers us to respond to the voice of the customer while focusing on continuous improvement. Commercial excellence enables us to deliver value to customers by supporting their growth and profitability with superior customer service.

We are also committed to sustainability through our four cornerstones of people, products, planet, and performance. We have invested in and are making important contributions to each, which are discussed in depth in our most recent Annual Report and Sustainability Report.

In the short term, we will maintain our focus on sales growth with expanding margins, with a goal of offsetting economic headwinds in certain end markets and geographies, raw material volatility and logistics cost inflation. Longer term, we will continue to focus on accelerating the launch of new products and collaborating with our customers to develop new and unique solutions for their benefit while focusing on our four cornerstones of sustainability - people, products, planet and performance - to ensure the growth we achieve is sustainable for us

and our customers. Capital expenditures will be focused primarily to support sales growth, investment in recent acquisitions, and other strategic investments. We also continue to consider acquisitions and other synergy opportunities that complement our core platforms. These actions will ensure that we continue to invest in our core capabilities and continue to support growth in key markets and product offerings.

We will continue our enterprise-wide Lean Six Sigma program directed at improving margin, profitability and cash flow by applying proven management techniques and strategies to key areas of the business, such as pricing, supply chain and operations management, productivity and quality. Long-term trends that currently provide opportunities to leverage our strategy and commitment to sustainability include improving health and wellness, protecting the environment, globalizing and localizing and increasing energy efficiency. Examples of how our strategy supports these trends can be found in numerous initiatives: active participation in the medical device market, leveraging our global footprint to deliver consistent solutions globally, light weighting and metal replacement and development of solutions that respond to ever-changing market needs by offering alternatives to traditional materials.

### Recent Developments

On January 2, 2019, the Company acquired Fiber-Line, LLC (Fiber-Line), a global leader in polymer coated engineered fibers and composite materials, for total consideration of \$152.7 million, net of cash acquired and inclusive of contingent consideration. Fiber-Line's results are reported in the Specialty Engineered Materials segment. The preliminary purchase price allocation resulted in intangible assets of \$77.1 million, goodwill of \$47.0 million, and net working capital of \$24.9 million.

On October 25, 2019, PolyOne completed the divestiture of its Performance Products and Solutions business segment (PP&S) for \$775 million in cash, subject to a working capital adjustment. Previously, PP&S was included as a separate operating segment. As a result of the sale, the PP&S operating segment results are now reported as discontinued operations. Historical information has been retrospectively adjusted to reflect these changes.

On December 19, 2019, the Company entered into the Agreement with Clariant, and separately entered into the BTA with Clariant India. Pursuant to the Agreement and the BTA, PolyOne has agreed to acquire the masterbatch businesses of Clariant and Clariant India for a net purchase price of \$1.45 billion in cash, subject to customary working capital and net debt adjustments. Each of the Agreement and the BTA contain certain customary termination rights, and, with respect to the Agreement only, the requirement that PolyOne pay a termination fee in the event the Agreement is terminated under certain conditions.

The closing of each acquisition is expected to occur in mid-2020, subject to the receipt of regulatory approvals, the satisfaction or waiver of customary closing conditions and, in the case of the Clariant India masterbatch acquisition, shareholder approval of Clariant India.

We intend to use (i) a portion of the net proceeds from the sale of PP&S, (ii) the net proceeds, after deducting the underwriters' discount but before deducting offering expenses, of approximately \$496.8 million from the issuance of common shares in an underwritten public offering that we completed in February 2020 and (iii) the net proceeds of an anticipated senior unsecured notes offering to finance the Clariant Acquisition, including the payment of related fees and expenses. Refer to "Liquidity" for more information regarding the financing for the Clariant Acquisition.

### Highlights and Executive Summary

A summary of PolyOne's sales, operating income, income from continuing operations, net of income taxes and net income from continuing operations attributable to PolyOne common shareholders is included in the following table:

(In millions)	2019	2018	2017
Sales	\$ 2,862.7	\$ 2,881.0	\$ 2,590.3
Operating income	156.8	178.6	173.1
Net income from continuing operations, net of income taxes	75.7	87.4	111.1
Net income from continuing operations attributable to PolyOne common shareholders	75.5	87.7	111.0

## Results of Operations

(Dollars in millions, except per share data)	Variances — Favorable (Unfavorable)						
				2019 versus 2018		2018 versus 2017	
	2019	2018	2017	Change	% Change	Change	% Change
Sales	\$ 2,862.7	\$ 2,881.0	\$ 2,590.3	\$ (18.3)	(0.6) %	\$ 290.7	11.2 %
Cost of sales	2,205.5	2,256.2	1,993.9	50.7	2.2 %	(262.3)	(13.2) %
Gross margin	657.2	624.8	596.4	32.4	5.2 %	28.4	4.8 %
Selling and administrative expense	500.4	446.2	423.3	(54.2)	(12.1) %	(22.9)	(5.4) %
Operating income	156.8	178.6	173.1	(21.8)	(12.2) %	5.5	3.2 %
Interest expense, net	(59.5)	(62.8)	(60.8)	3.3	5.3 %	(2.0)	(3.3) %
Debt extinguishment costs	—	(1.1)	(0.3)	1.1	nm	(0.8)	nm
Other income (expense), net	12.1	(12.9)	(0.1)	25.0	nm	(12.8)	nm
Income from continuing operations before income taxes	109.4	101.8	111.9	7.6	7.5 %	(10.1)	(9.0) %
Income tax expense	(33.7)	(14.4)	(0.8)	(19.3)	nm	(13.6)	nm
Net income from continuing operations	\$ 75.7	\$ 87.4	\$ 111.1	\$ (11.7)	(13.4) %	\$ (23.7)	(21.3) %
Income (loss) from discontinued operations, net of income taxes	513.1	72.1	(168.7)	441.0	nm	240.8	nm
Net income (loss)	588.8	159.5	(57.6)	429.3	nm	217.1	nm
Net loss (income) attributable to noncontrolling interests	(0.2)	0.3	(0.1)	(0.5)	nm	(0.4)	nm
Net income (loss) attributable to PolyOne common shareholders	\$ 588.6	\$ 159.8	\$ (57.7)	\$ 428.8	nm	\$ 217.5	nm
Earnings (loss) per share attributable to PolyOne common shareholders - basic:							
Continuing operations	\$ 0.98	\$ 1.10	\$ 1.36				
Discontinued operations	6.64	0.91	(2.07)				
Total	\$ 7.62	\$ 2.01	\$ (0.71)				
Earnings (loss) per share attributable to PolyOne common shareholders - diluted:							
Continuing operations	\$ 0.97	\$ 1.09	\$ 1.35				
Discontinued operations	6.61	0.90	(2.05)				
Total	\$ 7.58	\$ 1.99	\$ (0.70)				

nm - not meaningful

### Sales

Sales decreased \$18.3 million, or 0.6%, in 2019 compared to 2018, as growth provided by acquisitions of 4.3% was offset by organic sales decline of 3.4% and unfavorable foreign exchange of 1.5%.

### Cost of sales

As a percent of sales, cost of sales decreased from 78.3% in 2018 to 77.0% in 2019, primarily as a result of improved mix and lower environmental remediation costs.

### Selling and administrative expense

These costs include selling, technology, administrative functions, corporate and general expenses. Selling and administrative expense in 2019 increased \$54.2 million compared to 2018, primarily driven by costs associated with earnout adjustments and acquisitions.

### Interest expense, net

Interest expense, net decreased \$3.3 million in 2019 compared to 2018 due to favorable impact from net investment hedges, partially offset by the impact of increased interest rates associated with our variable rate debt and higher average outstanding balances. See Note 15, *Derivatives and Hedging*, to the accompanying consolidated financial statements for detail on hedging instruments.

### **Other income (expense), net**

The Company adopted Accounting Standards Update (ASU) 2017-07, *Compensation - Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*, on January 1, 2018. As a result, all components of net periodic benefit cost, except for service costs, are presented here. For further detail, see Note 10, *Employee Benefit Plans*, to the accompanying consolidated financial statements.

### **Debt extinguishment costs**

Debt extinguishment costs of \$1.1 million for 2018 include the write-off of unamortized deferred financing costs and premium and consent payments in connection with the amendments of our senior secured term loan due 2026 and our senior secured revolving credit facility. There were no debt extinguishment costs incurred in 2019. See Note 5, *Financing Arrangements*, to the accompanying consolidated financial statements for additional information.

### **Income taxes**

The Company is subject to taxation in the U.S. and numerous foreign jurisdictions. In determining the effective income tax rate, the Company analyzes various factors, including annual earnings, the laws of taxing jurisdictions in which the earnings were generated, the impact of state and local income taxes, the ability to use tax credits, net operating loss carryforwards, and available tax planning alternatives. Discrete items, including the effect of changes in tax laws, statutory tax rates, and valuation allowances or other non-recurring tax adjustments are reflected in the period in which they occur as an addition to, or reduction from, the income tax provision.

The Tax Cuts and Jobs Act (TCJA) was enacted on December 22, 2017. Among other things, effective in 2018, the TCJA reduced the U.S. federal corporate tax rate from 35% to 21%, exempts from U.S. federal income taxation dividends from certain foreign corporations to their U.S. shareholders, eliminates or reduces the effect of various federal tax deductions and creates new taxes on certain outbound payments and future foreign earnings generated after 2017. The TCJA required U.S. companies to pay a one-time transition tax on earnings of foreign corporate subsidiaries that were at least ten-percent owned by such U.S. companies and that were previously deferred from U.S. taxation.

As of December 31, 2018, we completed our accounting for the tax effects of the enactment of the TCJA. In compliance with the one-year measurement period of the SEC's Staff Accounting Bulletin 118 (SAB 118) (issued December 22, 2017), we have finalized the effects of the TCJA on our existing deferred income tax balances, the one-time transition tax and, as discussed below, the impact the TCJA had on our indefinite reinvestment assertion pursuant to Accounting Principles Board 23 (APB 23). These finalized effects are included as components of income tax expense from continuing operations and are noted in the following tabular reconciliation.

As of December 31, 2018, we completed our analysis with respect to the impact of the TCJA on our continuing assertion that our foreign earnings are indefinitely reinvested pursuant to APB 23 of Accounting Standards Codification 740-30 (ASC 740-30). APB 23 provides guidance that US companies do not need to recognize tax effects on foreign earnings that are indefinitely reinvested. Our assertion has changed with respect to certain earnings of foreign affiliates in certain countries, which resulted in a recognition of tax liabilities. As of December 31, 2018, and as noted in the following tabular reconciliation, the Repatriation of certain foreign earnings from prior and current periods totaled 9.4%. This consisted of an impact of 7.5% to our provision from a decision to repatriate prior year earnings after completing our analysis with respect to the TCJA and 1.9% pertaining to our decision to repatriate certain current year earnings. For the year ended December 31, 2019, the rate impact was 1.6% pertaining to our decision to repatriate certain current year earnings. The rest of our foreign earnings are indefinitely reinvested pursuant to APB 23 and our policy. No deferred income taxes were recorded on outside basis differences as it was not practicable to determine the provision impact, if any, due to the complexities associated with this calculation.

We elected to recognize the resulting tax on global intangible low-taxed income (GILTI) and the deduction of foreign-derived intangible income (FDII) as a period expense in the period the tax is incurred.

A reconciliation of the applicable U.S. federal statutory tax rate to the consolidated effective income tax rate from continuing operations along with a description of significant or unusual reconciling items is included below.

(In millions)	Twelve Months Ended December 31,		
	2019	2018	2017
Federal statutory income tax rate	21.0 %	21.0 %	35.0 %
Tax on GILTI	1.9	3.3	—
Repatriation on certain foreign earnings from prior and current periods	1.6	9.4	0.8
Net impact of non-deductible acquisition earnouts	2.8	0.2	—
Tax on one-time gain from sale of other assets	6.0	—	—
U.S. tax reform, transition tax	0.2	2.1	17.8
U.S. tax reform, tax effect on net deferred tax liabilities	—	(5.4)	(18.0)
Tax impact of FDII deduction	(2.0)	(0.4)	—
Research and development credit	(2.8)	(0.8)	(1.4)
Domestic production activities deduction	—	(1.1)	(2.4)
Amended prior period tax returns and corresponding favorable audit adjustments	(0.7)	—	(6.8)
Tax benefits on certain foreign investments	—	—	(12.8)
State and local tax, net	4.2	2.3	0.2
Foreign tax rate differential	(8.9)	(12.1)	(20.0)
Foreign permanent items	7.5	(1.6)	2.4
Net impact of uncertain tax positions	(2.4)	(0.6)	4.8
Changes in valuation allowances	1.7	(3.4)	1.4
Other	0.7	1.2	(0.3)
Effective income tax rate	30.8 %	14.1 %	0.7 %

#### 2019 compared to 2018

For 2019, the Company decided to repatriate certain current year foreign earnings that will be remitted in the future which had an unfavorable tax impact of \$1.8 million (1.6%). This was lower than 2018, as the decision was to repatriate certain foreign earnings from both current and prior periods having an unfavorable tax impact of \$9.6 million (9.4%).

The increase in the State and local tax, net line resulted from an unfavorable state tax audit decision combined with higher domestic earnings in 2019.

The increase in the Foreign permanent items line primarily related to the non-deductibility of interest expense relating to the receipt of tax-exempt dividends which caused an unfavorable tax effect of \$10.3 million (9.4%).

The increase in the benefit in the Net impact of uncertain tax positions line resulted from the expiration of statute of limitations and favorable tax settlements.

The unfavorable change reflected in the Changes in valuation allowances line from 2018 to 2019 resulted from operational losses and the absence of the realizability of deferred tax assets that occurred in 2018.

#### 2018 compared to 2017

The increase in the Repatriation on certain foreign earnings from 2017 to 2018 line items resulted from a decision to repatriate certain foreign earnings from 2018 and 2017.

The increase in the State and local tax, net line resulted from an unfavorable state tax audit decision.

In 2018, Foreign permanent items line included a favorable tax treatment of a foreign intellectual property transaction.

The benefit reflected in the Changes in valuation allowances line resulted from the realizability of a deferred tax asset for one of our foreign entities.

## Segment Information

Operating income is the primary measure that is reported to our chief operating decision maker for purposes of making decisions about allocating resources to the segments and assessing their performance. Operating income at the segment level does not include: corporate general and administrative costs that are not allocated to segments; intersegment sales and profit eliminations; charges related to specific strategic initiatives, such as the consolidation of operations; restructuring activities, including employee separation costs resulting from personnel reduction programs, plant closure and phase-in costs; costs incurred directly in relation to acquisitions or divestitures; integration costs; executive separation agreements; share-based compensation costs; environmental remediation costs and other liabilities for facilities no longer owned or closed in prior years; actuarial gains and losses associated with our pension and post-retirement benefit plans; and certain other items that are not included in the measure of segment profit or loss that is reported to and reviewed by our chief operating decision maker. These costs are included in *Corporate and eliminations*.

PolyOne has three reportable segments: (1) Color, Additives and Inks; (2) Specialty Engineered Materials; and (3) Distribution.

Our segments are further discussed in Note 14, *Segment Information*, to the accompanying consolidated financial statements.

### Sales and Operating Income — 2019 compared with 2018 and 2018 compared with 2017

(Dollars in millions)				2019 versus 2018		2018 versus 2017	
	2019	2018	2017	Change	% Change	Change	% Change
Sales:							
Color, Additives and Inks	\$ 1,003.8	\$ 1,046.5	\$ 893.2	\$ (42.7)	(4.1)%	\$ 153.3	17.2 %
Specialty Engineered Materials	745.7	645.8	624.3	99.9	15.5 %	21.5	3.4 %
Distribution	1,192.2	1,265.4	1,154.6	(73.2)	(5.8)%	110.8	9.6 %
Corporate and eliminations	(79.0)	(76.7)	(81.8)	(2.3)	(3.0)%	5.1	6.2 %
Sales	<u>\$ 2,862.7</u>	<u>\$ 2,881.0</u>	<u>\$ 2,590.3</u>	<u>\$ (18.3)</u>	<u>(0.6)%</u>	<u>\$ 290.7</u>	<u>11.2 %</u>
Operating income:							
Color, Additives and Inks	\$ 147.4	\$ 158.5	\$ 138.6	\$ (11.1)	(7.0)%	\$ 19.9	14.4 %
Specialty Engineered Materials	86.8	72.3	75.5	14.5	20.1 %	(3.2)	(4.2)%
Distribution	75.4	71.5	72.6	3.9	5.5 %	(1.1)	(1.5)%
Corporate and eliminations	(152.8)	(123.7)	(113.6)	(29.1)	(23.5)%	(10.1)	(8.9)%
Operating income	<u>\$ 156.8</u>	<u>\$ 178.6</u>	<u>\$ 173.1</u>	<u>\$ (21.8)</u>	<u>(12.2)%</u>	<u>\$ 5.5</u>	<u>3.2 %</u>
Operating income as a percentage of sales:							
Color, Additives and Inks	14.7 %	15.1 %	15.5 %	(0.4)%	points	(0.4)%	points
Specialty Engineered Materials	11.6 %	11.2 %	12.1 %	0.4 %	points	(0.9)%	points
Distribution	6.3 %	5.7 %	6.3 %	0.6 %	points	(0.6)%	points
Total	5.5 %	6.2 %	6.7 %	(0.7)%	points	(0.5)%	points

### **Color, Additives and Inks**

Sales decreased \$42.7 million, or 4.1%, in 2019 compared to 2018. Growth in sustainable solutions and the packaging and healthcare end markets, as well as continued gains in pricing and mix, were more than offset by continued weakness in the Chinese automotive end market as well as the North American consumer and industrial markets. Unfavorable foreign exchange reduced sales by 2.5%.

Operating income decreased \$11.1 million in 2019 compared to 2018. Unfavorable foreign exchange and the continued softness in the automotive and consumer end markets drove the decline.

### **Specialty Engineered Materials**

Sales increased \$99.9 million, or 15.5%, in 2019 compared to 2018. Acquisitions contributed 19.0% growth while North America composites, healthcare, and the wire and cable end markets contributed as well. These gains were partially offset by unfavorable foreign exchange of 2.4% and weakness in the transportation and electronic end markets.

Operating income increased by \$14.5 million in 2019 compared to 2018 as a result of acquisitions and margin expansion from improved mix, which were partially offset by unfavorable foreign exchange.

### **Distribution**

Sales decreased \$73.2 million, or 5.8%, in 2019 compared to 2018 due to lower volume and average selling prices, reflecting raw material deflation.

Operating income increased \$3.9 million in 2019 compared to 2018 as a result of improved mix and pricing.

### **Corporate and Eliminations**

Corporate and eliminations increased \$29.1 million in 2019 compared to 2018. This increase was primarily as a result of adjustments to estimated earnout liabilities due to better than expected results from recent acquisitions. See Note 2, *Business Combinations* to the accompanying condensed consolidated financial statements for further details.

### **Liquidity and Capital Resources**

Our objective is to finance our business through operating cash flow and an appropriate mix of debt and equity. By laddering the maturity structure, we avoid concentrations of debt maturities, reducing liquidity risk. We may from time to time seek to retire or purchase our outstanding debt with cash and/or exchanges for equity securities, in open market purchases, privately negotiated transactions or otherwise. We may also seek to repurchase our outstanding common shares. Such repurchases, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved have been and may continue to be material.

The following table summarizes our liquidity as of December 31, 2019:

(In millions)		
Cash and cash equivalents	\$	864.7
Revolving credit availability		281.1
Liquidity	\$	1,145.8

As of December 31, 2019, approximately 29% of the Company's cash and cash equivalents resided outside the United States.

Based on current projections, we believe that we will be able to continue to manage and control working capital, discretionary spending and capital expenditures and that cash provided by operating activities, along with available borrowing capacity under our revolving credit facilities, will allow us to maintain adequate levels of available capital to fund our operations, meet debt service obligations, continue paying dividends, and opportunistically repurchase outstanding common shares.

In connection with the Clariant Acquisition, on December 19, 2019, we entered into a Commitment Letter with a number of banks (the Commitment Parties), pursuant to which the Commitment Parties have provided a 12-month commitment for a \$1.15 billion senior unsecured bridge loan facility (the Bridge Facility) for purposes of funding the Clariant Acquisition. The Commitment Parties' commitments under the Bridge Facility were subsequently reduced on a dollar-for-dollar basis by the net proceeds from the issuance of common shares in an underwritten public offering that we completed in February 2020. The Company currently intends to issue new senior unsecured notes in lieu of borrowing under the Bridge Facility.

Expected sources of cash in 2020 outside of the Clariant Acquisition include cash from operations and available liquidity under our revolving credit facility, if needed. Outside of the Clariant Acquisition, expected uses of cash in 2020 include select specialty acquisitions, interest payments, cash taxes, dividend payments, share repurchases, environmental remediation costs and capital expenditures. Capital expenditures are currently estimated to be approximately \$65.0 million in 2020, primarily to support sales growth, our continued investment in recent acquisitions and other strategic investments.

Additionally, as further described in Note 11, *Commitments and Contingencies*, to the accompanying consolidated financial statements, we may incur additional uses of cash for environmental remediation at the former Goodrich Corporation Calvert City site.

## Cash Flows

The following summarizes our cash flows from operating, investing and financing activities.

(In millions)	2019	2018	2017
<b>Cash provided by (used by):</b>			
Operating Activities	\$ 300.8	\$ 253.7	\$ 202.4
Investing Activities	611.9	(170.3)	(119.4)
Financing Activities	(218.3)	(148.1)	(72.7)
Effect of exchange rate on cash	(0.6)	(8.0)	6.6
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>\$ 693.8</b>	<b>\$ (72.7)</b>	<b>\$ 16.9</b>

### Operating activities

In 2019, net cash provided by operating activities was \$300.8 million as compared to \$253.7 million in 2018. This increase was primarily as a result of working capital improvements.

In 2018, net cash provided by operating activities was \$253.7 million as compared to \$202.4 million in 2017. The increase in net cash provided by operating activities of \$51.3 million primarily reflects improved working capital as well as a receipt of \$27.9 million of U.S. federal income tax refunds.

### Investing Activities

Net cash provided by investing activities during 2019 of \$611.9 primarily reflects \$119.6 million for the acquisition of Fiber-Line, and \$81.7 million of capital expenditures, \$761.8 proceeds from the divestiture of PP&S, and \$51.4 million cash proceeds from the sale of other assets.

Net cash used by investing activities during 2018 of \$170.3 million reflects acquisitions of \$98.6 million and capital expenditures of \$76.0 million.

### Financing Activities

Net cash used by financing activities in 2019 primarily reflects \$60.3 million of dividends paid, repurchases of our outstanding common shares of \$26.9 million, net repayments of \$120.5 million under our senior secured revolving credit facility, and from proceeds received from the sale of PP&S.

Net cash used by financing activities in 2018 primarily reflects repurchases of \$123.0 million of our outstanding common shares, cash dividends paid of \$56.1 million, and repayment of debt of \$22.9 million. Net borrowings of \$62.6 million under our revolving credit facilities partially offset these uses.



## Total Debt

The following table summarizes debt as presented at December 31, 2019 and 2018.

(In millions)	December 31, 2019	December 31, 2018
Senior secured revolving credit facility due 2022	\$ —	\$ 120.1
Senior secured term loan due 2026	614.7	619.8
5.25% senior notes due 2023	596.3	595.0
Other Debt	18.3	20.7
<b>Total Debt</b>	<b>\$ 1,229.3</b>	<b>\$ 1,355.6</b>
Less short-term and current portion of long-term debt	18.4	19.4
<b>Total long-term debt, net of current portion</b>	<b>\$ 1,210.9</b>	<b>\$ 1,336.2</b>

On April 11, 2018, the Company entered into a fifth amendment to its senior secured term loan. Under the terms of the amended senior secured term loan, the margin was reduced by 25 basis points to 175 basis points. At the Company's discretion, interest is based upon (i) a margin rate of 175 basis points plus the 1-, 2-, 3-, or 6-month LIBOR, subject to a floor of 75 basis points, or (ii) a margin rate of 75 basis points plus a Prime Rate, subject to a floor of 175 basis points. On November 9, 2018, the Company entered into a sixth amendment to its senior secured term loan, which extended the maturity to 2026. Repayments in the amount of one percent of the aggregate principal amount as of August 3, 2016 are payable annually, while the remaining balance matures on January 30, 2026. The weighted average annual interest rate under the senior secured term loan for the year ended December 31, 2019 and 2018 was 4.01% and 3.80%, respectively. The total principal repayments for the year ended December 31, 2019 were \$6.5 million.

The Company maintains a senior secured revolving credit facility, which matures on February 24, 2022 and provides a maximum borrowing facility size of \$450.0 million, subject to a borrowing base with advances against certain U.S. and Canadian accounts receivable, inventory and other assets as specified in the agreement. On June 28, 2019, the Company amended and restated its senior secured revolving credit facility to, among other things, add a European line of credit, up to the euro equivalent of \$50.0 million, subject to a borrowing base with advances against certain European accounts receivable. Advances under the U.S. portion of our revolving credit facility bear interest, at the Company's option, at a Base Rate or a LIBOR Rate plus an applicable margin. The Base Rate is a fluctuating rate equal to the greater of (i) the Federal Funds Rate plus one-half percent, (ii) the prevailing LIBOR Rate plus one percent, and (iii) the prevailing Prime Rate. The applicable margins vary based on the Company's daily average excess availability during the previous quarter. The weighted average annual interest rate under this facility for the year ended December 31, 2019 and 2018 was 3.90% and 3.35%, respectively. As of December 31, 2019, we had no borrowings under our revolving credit facility, which had remaining availability of \$279.4 million. As of December 31, 2018, we had borrowings of \$120.1 million under our revolving credit facility, which had remaining availability of \$279.4 million.

The agreements governing our revolving credit facility and our senior secured term loan, and the indentures and credit agreements governing other debt, contain a number of customary financial and restrictive covenants that, among other things, limit our ability to: sell or otherwise transfer assets, including in a spin-off, incur additional debt or liens, consolidate or merge with any entity or transfer or sell all or substantially all of our assets, pay dividends or make certain other restricted payments, make investments, enter into transactions with affiliates, create dividend or other payment restrictions with respect to subsidiaries, make capital investments and alter the business we conduct. As of December 31, 2019, we were in compliance with all covenants.

As of both December 31, 2019 and 2018, the Company maintained a credit line of \$12.0 million with Saudi Hollandi Bank. The credit line has an interest rate equal to the Saudi Arabia Interbank Offered Rate plus a fixed rate of 0.85% and is subject to annual renewal. Borrowings under the credit line were primarily used to fund capital expenditures related to the manufacturing facility in Jeddah, Saudi Arabia. As of December 31, 2019, letters of credit under the credit line were immaterial and borrowings were \$10.3 million with a weighted average annual interest rate of 3.14%. As of December 31, 2018, letters of credit under the credit line were immaterial and borrowings were \$10.7 million with a weighted average annual interest rate of 3.35%. As of December 31, 2019 and 2018, there was remaining availability on the credit line of \$1.7 million and \$1.3 million, respectively.

For additional information about our debt obligations, see Note 5, *Financing Arrangements*, to the accompanying consolidated financial statements.

## Letters of Credit

Our revolving credit facility provides up to \$50.0 million for the issuance of letters of credit, \$10.3 million of which was used at December 31, 2019. These letters of credit are issued by the bank in favor of third parties and are mainly related to insurance claims.

## Contractual Cash Obligations

The following table summarizes our obligations under debt agreements, operating leases, interest obligations, pension and other post-retirement plan obligations and purchase obligations as of December 31, 2019:

(In millions)	Payment Due by Period				
	Total	2020	2021 & 2022	2023 & 2024	Thereafter
Total debt (1)	\$ 1,242.8	\$ 18.4	\$ 14.7	\$ 614.0	\$ 595.7
Operating leases	71.7	24.0	27.3	12.6	7.8
Interest on long-term debt obligations (2)	355.0	70.6	126.4	101.6	56.4
Pension and post-retirement obligations (3)	44.3	5.0	9.9	9.1	20.3
Purchase obligations (4)	35.8	21.5	13.7	0.6	—
Total	\$ 1,749.6	\$ 139.5	\$ 192.0	\$ 737.9	\$ 680.2

(1) Total debt includes both the current and long-term portions of debt and capital lease obligations.

(2) Represents estimated contractual interest payments for all outstanding debt.

(3) Pension and post-retirement obligations relate to our U.S. and international pension and other post-retirement plans. The expected payments associated with these plans represent an actuarial estimate of future assumed payments based upon retirement and payment patterns for a 10 year period. Due to uncertainties regarding the assumptions involved in estimating future required contributions to our pension and non-pension postretirement benefit plans, including: (i) interest rate levels, (ii) the amount and timing of asset returns and (iii) what, if any, changes may occur in pension funding legislation, the estimates in the table may differ materially from actual future payments.

(4) Purchase obligations are primarily comprised of service agreements related to telecommunication, information technology, utilities and other manufacturing plant services and certain capital commitments.

The table excludes the liability for unrecognized income tax benefits, because we cannot predict with reasonable certainty the timing of cash settlements, if any, with the applicable taxing authorities. At December 31, 2019, the gross liability for unrecognized income tax benefits, including interest and penalties, totaled \$12.6 million.

## Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements that we are aware of as defined in Item 303(a)(4)(ii) of Regulation S-K.

## Critical Accounting Policies and Estimates

Significant accounting policies are described more fully in Note 1, *Description of Business and Summary of Significant Accounting Policies*, to the accompanying consolidated financial statements. The preparation of financial statements in conformity with U.S. generally accepted accounting principles (U.S. GAAP) requires us to make estimates and assumptions about future events that affect the amounts reported in our consolidated financial statements and accompanying notes. We base our estimates on historical experience and assumptions that we believe are reasonable considering the related facts and circumstances. The application of these critical accounting policies involves the exercise of judgment and use of assumptions for future uncertainties. Accordingly, actual results could differ significantly from these estimates. We believe that the following discussion addresses our most critical accounting policies, which are those that are the most important to the portrayal of our financial condition and results of operations and require our most difficult, subjective and complex judgments.

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Environmental Liabilities</b>		
<ul style="list-style-type: none"> <li>Based upon our estimates, we had an undiscounted accrual of \$112.0 million at December 31, 2019 for probable future environmental expenditures. Any such provision is recognized using the Company's best estimate of the amount of loss incurred, or at the lower end of an estimated range, when a single best estimate is not determinable.</li> <li>With respect to the former Goodrich Corporation Calvert City site, the United States Environmental Protection Agency (USEPA) issued its Record of Decision (ROD) in September 2018, selecting a remedy consistent with our accrual assumptions. In April 2019, the respondents signed an Administrative Settlement Agreement and Order on Consent with the USEPA to conduct the remedial design. In October 2019, the USEPA sent a Special Notice Letter to PolyOne, Westlake Vinyls, and Goodrich Corporation, inviting negotiation of a Consent Decree to perform the remedial actions at the site. On December 23, 2019, the three companies submitted to the USEPA a Good Faith Offer letter agreeing to negotiate a Consent Decree, along with a draft proposed Consent Decree and draft remedial action Work Plan.</li> <li>Franklin-Burlington, a subsidiary of PolyOne's former DSS business, is listed as a cooperating party along with approximately 70 other companies. The cooperating parties are working with the EPA on the lower Passaic River Study Area. Based on currently available information as of December 31, 2019, we have not identified evidence that Franklin-Burlington contributed any of the primary contaminants of concern to the lower Passaic River and therefore have not accrued for costs of remediation to the lower Passaic River.</li> <li>In some cases, the Company recovers a portion of the costs relating to these obligations from insurers or other third parties; however, the Company records such amounts only when they are collected.</li> </ul>	<ul style="list-style-type: none"> <li>This accrual represents our best estimate of the remaining probable costs based upon information and technology currently available. Depending upon the results of future testing, the ultimate remediation alternatives undertaken, changes in regulations, new information, newly discovered conditions and other factors, it is reasonably possible that we could incur additional costs in excess of the amount accrued. However, such additional costs, if any, cannot currently be estimated. Our estimate of this liability may be revised as new regulations or technologies are developed or additional information is obtained.</li> </ul>	<ul style="list-style-type: none"> <li>If further developments or resolution of these matters are not consistent with our assumptions and judgments, we may need to recognize a significant adjustment in a future period.</li> <li>As we progress through certain benchmarks such as completion of the remedial investigation and feasibility study, issuance of a record of decision and remedial design, additional information will become available that may require an adjustment to our existing reserves.</li> </ul>

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Pension and Other Post-retirement Plans</b>		
<ul style="list-style-type: none"> <li>We account for our defined benefit pension plans and other post-retirement plans in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Update (ASC) Topic 715, <i>Compensation — Retirement Benefits</i>. We immediately recognize actuarial gains and losses in our operating results in the year in which the gains or losses occur. In 2019, we recognized a \$9.6 million benefit as a result of the recognition of these actuarial gains, which favorably impacted net income (loss), comprehensive income (loss) and the funded status of our pension plans, primarily the result of actual asset returns that were higher than our assumed returns and mortality assumptions. Partially offsetting these gains was a decrease in our discount rate.</li> </ul>	<ul style="list-style-type: none"> <li>Asset returns and interest rates significantly affect the value of future assets and liabilities of our pension and post-retirement plans and therefore the funded status of our plans. It is difficult to predict these factors due to the volatility of market conditions.</li> <li>To develop our discount rate, we consider the yields of high-quality corporate bonds with maturities that correspond to the timing of our benefit obligations, referred to as the bond matching approach.</li> <li>To develop our expected long-term return on plan assets, we consider historical and forward looking long-term asset returns and the expected investment portfolio mix of plan assets. The weighted-average expected long-term rate of return on plan assets was 5.68% for 2019, 5.09% for 2018 and 6.08% for 2017.</li> <li>Life expectancy is a significant assumption that impacts our pension and other post-retirement benefits obligation. During 2019, we adopted the MP-2018 mortality improvement scale which was issued by the Society of Actuaries in October 2019.</li> </ul>	<ul style="list-style-type: none"> <li>The weighted average discount rates used to value our pension liabilities as of December 31, 2019 and 2018 were 4.11% and 3.62%, respectively, post-retirement liabilities were 3.98% and 3.60%, respectively. As of December 31, 2019, an increase/decrease in the discount rate of 50 basis points, holding all other assumptions constant, would have increased or decreased pre-tax income and the related pension and post-retirement liability by approximately \$19.4 million. An increase/decrease in the discount rate of 50 basis points as of December 31, 2019 would result in a change of approximately \$1.3 million in the 2020 net periodic benefit cost.</li> <li>The expected long-term return on plan assets utilized as of January 1, 2019 and 2018 was 5.68% and 5.09%, respectively. An increase/decrease in our expected long-term return on plan assets of 50 basis points as of December 31, 2019, would result in a change of approximately \$2.2 million to 2019 net periodic benefit cost.</li> </ul>
<b>Income Taxes</b>		
<ul style="list-style-type: none"> <li>We account for income taxes using the asset and liability method under ASC Topic 740. Under the asset and liability method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In addition, deferred tax assets are also recorded with respect to net operating losses and other tax attribute carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. Valuation allowances are established when realization of the benefit of deferred tax assets is not deemed to be more likely than not. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.</li> <li>We recognize net tax benefits under the recognition and measurement criteria of ASC Topic 740, Income Taxes, which prescribes requirements and other guidance for financial statement recognition and measurement of positions taken or expected to be taken on tax returns. We record interest and penalties related to uncertain tax positions as a component of income tax expense.</li> </ul>	<ul style="list-style-type: none"> <li>The ultimate recovery of certain of our deferred tax assets is dependent on the amount and timing of taxable income that we will ultimately generate in the future and other factors such as the interpretation of tax laws. We have provided valuation allowances as of December 31, 2019, aggregating to \$16.2 million primarily against certain foreign and state net operating loss carryforwards based on our current assessment of future operating results and other factors. At December 31, 2019, the gross liability for unrecognized income tax benefits, including interest and penalties, totaled \$12.6 million.</li> <li>Undistributed and indefinitely reinvested earnings for certain consolidated non-U.S. subsidiaries were approximately \$395 million as of December 31, 2019. No provision was made on these earnings as APB 23 of ASC 740-30 provides guidance that U.S. companies do not need to recognize tax effects on foreign earnings that are indefinitely reinvested. Additionally, no deferred income taxes were recorded on outside basis differences as it was not practicable to determine the provision impact, if any, due to the complexities associated with this calculation.</li> </ul>	<ul style="list-style-type: none"> <li>Although management believes that the estimates and judgments discussed herein are reasonable, actual results could differ, which could result in income tax expense or benefits that could be material.</li> </ul>

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Goodwill</b>		
<ul style="list-style-type: none"> <li>Goodwill represents the excess of the purchase price over the fair value of the net assets of acquired companies. We follow the guidance in ASC 350, <i>Intangibles — Goodwill and Other</i>, including subsequent updates, and test goodwill for impairment at least annually, absent a triggering event that would warrant an impairment assessment. On an ongoing basis, absent any impairment indicators, we perform our goodwill impairment testing as of the first day of October of each year.</li> </ul>	<ul style="list-style-type: none"> <li>We have identified our reporting units at the operating segment level, or in most cases, one level below the operating segment level. Goodwill is allocated to the reporting units based on the estimated fair value at the date of acquisition.</li> <li>We estimated fair value using the best information available to us, including market information and discounted cash flow projections using the income approach.</li> <li>The income approach requires us to make assumptions and estimates regarding projected economic and market conditions, growth rates, operating margins and cash expenditures. Sensitivity analyses were performed around these assumptions in order to assess the reasonableness of the assumptions and the resulting estimated fair values.</li> </ul>	<ul style="list-style-type: none"> <li>If actual results are not consistent with our assumptions and estimates, we may be exposed to goodwill impairment charges.</li> <li>The fair value of the reporting unit is based on a number of subjective factors including: (a) appropriate consideration of valuation approaches, (b) the consideration of our business outlook and (c) weighted average cost of capital (discount rate), growth rates and market multiples for our estimated cash flows.</li> <li>Based on our 2019 annual impairment test performed on October 1st, we determined there were no reporting units considered to be at risk of future impairment due to the fair value's proximity to the carrying value. We believe that the current assumptions and estimates are reasonable, supportable and appropriate. The business could be impacted by unforeseen changes in market factors or opportunities, which could impact our existing assumptions used in our impairment test. As such, there can be no assurance that these estimates and assumptions made for the purposes of the goodwill impairment test will prove to be accurate predictions of future performance.</li> </ul>
<b>Indefinite-lived Intangible Assets</b>		
<ul style="list-style-type: none"> <li>Indefinite-lived intangible assets represent trade names associated with acquired companies.</li> </ul>	<ul style="list-style-type: none"> <li>We estimate the fair value of trade names using a "relief from royalty payments" approach. This approach involves two steps: (1) estimating reasonable royalty rate for the trade name and (2) applying this royalty rate to a net sales stream and discounting the resulting cash flows to determine fair value. Fair value is then compared with the carrying value of the trade name.</li> </ul>	<ul style="list-style-type: none"> <li>If actual results are not consistent with our assumptions and estimates, we may be exposed to impairment charges related to our indefinite lived trade name</li> <li>Based on our 2019 annual impairment test, no trade names were considered at risk.</li> </ul>

## Recent and Future Adoption of Accounting Standards

Information regarding recent and future adoption of accounting standards can be found in Note 1, *Description of Business and Summary of Significant Accounting Policies*, to the accompanying consolidated financial statements and is incorporated by reference herein.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to certain market risks as part of our ongoing business operations, including risks from changes in interest rates on debt obligations and foreign currency exchange rates that could impact our financial condition, results of operations and cash flows. We manage our exposure to these and other market risks through regular operating and financing activities, including the use of derivative financial instruments. We intend to use these derivative financial instruments as risk management tools and not for speculative investment purposes.

*Interest rate exposure* — Interest on our revolving credit facility and senior secured term loan is based upon a Prime rate or LIBOR, plus a margin. Interest on the credit line with Saudi Hollandi Bank is based upon SAIBOR plus a fixed rate of 0.85%. There would be no material impact on our interest expense or cash flows from either a 10% increase or decrease in market rates of interest on our outstanding variable rate debt as of December 31, 2019.

*Foreign currency exposure* — We enter into intercompany transactions that are denominated in various foreign currencies and are subject to financial exposure from foreign exchange rate movement from the date a loan is recorded to the date it is settled or revalued. To mitigate this risk, we may enter into foreign exchange forward contracts and derivative instruments. Gains and losses on these contracts generally offset gains and losses on the assets and liabilities being hedged.

We face translation risks related to the changes in foreign currency exchange rates. Amounts invested in our foreign operations are translated into U.S. dollars at the exchange rates in effect at the balance sheet date. The resulting translation adjustments are recorded as a component of *Accumulated other comprehensive loss* in the Shareholders' equity section of the accompanying Consolidated Balance Sheets. Net sales and expenses in our foreign operations' foreign currencies are translated into varying amounts of U.S. dollars depending upon whether the U.S. dollar weakens or strengthens against other currencies. Therefore, changes in exchange rates may either positively or negatively affect our net sales and expenses from foreign operations as expressed in U.S. dollars.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

### **Index to Financial Statements**

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## MANAGEMENT'S REPORT

The management of PolyOne Corporation is responsible for preparing the consolidated financial statements and disclosures included in this Annual Report on Form 10-K. The consolidated financial statements and disclosures included in this Annual Report fairly present in all material respects the consolidated financial position, results of operations, shareholders' equity and cash flows of PolyOne Corporation as of and for the year ended December 31, 2019.

Management is responsible for establishing and maintaining disclosure controls and procedures designed to ensure that the information required to be disclosed by the Company is captured and reported in a timely manner. Management has evaluated the design and operation of the Company's disclosure controls and procedures at December 31, 2019 and found them to be effective.

Management is also responsible for establishing and maintaining a system of internal control over financial reporting that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes policies and procedures that provide reasonable assurance that: PolyOne Corporation's accounting records accurately and fairly reflect the transactions and dispositions of the assets of the Company; unauthorized or improper acquisition, use or disposal of Company assets will be prevented or timely detected; the Company's transactions are properly recorded and reported to permit the preparation of the Company's consolidated financial statements in conformity with generally accepted accounting principles; and the Company's receipts and expenditures are made only in accordance with authorizations of management and the Board of Directors of the Company.

Management has assessed the effectiveness of PolyOne's internal control over financial reporting as of December 31, 2019 and has prepared Management's Annual Report On Internal Control Over Financial Reporting contained on page 68 of this Annual Report, which concludes that as of December 31, 2019, PolyOne's internal control over financial reporting is effective and that no material weaknesses were identified.

/s/ ROBERT M. PATTERSON

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Robert M. Patterson  
Chairman, President and Chief Executive Officer

/s/ BRADLEY C. RICHARDSON

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Bradley C. Richardson  
Executive Vice President and Chief Financial Officer

February 18, 2020



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

### The Board of Directors and Shareholders of PolyOne Corporation

#### Opinion on Internal Control over Financial Reporting

We have audited PolyOne Corporation's internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, PolyOne Corporation (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of PolyOne Corporation as of December 31, 2019 and 2018, the related consolidated statements of income (loss), comprehensive income (loss), shareholders' equity and cash flows for each of the three years in the period ended December 31, 2019, and the related notes of PolyOne Corporation and our report dated February 18, 2020, expressed an unqualified opinion thereon.

#### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying "Management's Annual Report on Internal Control over Financial Reporting." Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

#### Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young

Cleveland, Ohio

February 18, 2020

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

### The Board of Directors and Shareholders of PolyOne Corporation

#### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of PolyOne Corporation (the Company) as of December 31, 2019 and 2018, the related consolidated statements of income (loss), comprehensive income (loss), shareholders' equity and cash flows for each of the three years in the period ended December 31, 2019, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 18, 2020 expressed an unqualified opinion thereon.

#### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

#### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### ***Environmental Accrued Liabilities***

##### *Description of the Matter*

As described in Note 11 to the consolidated financial statements, the environmental accrued liability as of December 31, 2019 is approximately \$112 million and is comprised primarily of the cost estimate for the Calvert City location of \$100.8 million. The Company records an accrual for probable future environmental remediation projects on an undiscounted basis which represents management's best estimate of probable future costs based upon currently available information and technology and management's view of the most likely remedy.

Auditing the determination of the accrual involved a high degree of subjectivity as estimates underlying the determination of the accrual were based on assumptions unique to the affected site and subject to various laws and regulations governing the protection of the applicable environment. Actual costs incurred in future periods could differ from amounts estimated and future changes to environmental laws and regulations could increase the extent of remediation work required, therefore the calculation is complicated due to uncertainty in determining the probable future costs and the extent of the remediation efforts.

*How We Addressed the Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's process to establish the environmental accrued liability, including management's review and evaluation of the information included in the Calvert City Record of Decision and the Administrative Settlement Agreement and Order on Consent issued by the United States Environmental Protection Agency (USEPA). For example, we tested controls over management's review of the estimation and the significant assumptions used to develop future cost estimates. We also tested management's controls to validate that the data used in the accrual estimate was complete and accurate.

With the assistance of our specialist, we tested the balance of the environmental accrued liability and the disclosure of the expected cost to remediate. Our audit procedures included, among others, making inquiries of internal general counsel, obtaining internal general counsel's representation and external communications used in determining the environmental accrued liability. This included an evaluation of externally available information and a comparison of management's cost estimates to the estimates published in the Record of Decision by the USEPA. We tested the significant assumptions used by management by comparing those assumptions to accepted industry practice and information included in the Record of Decision issued by the USEPA. We examined historical costs for recurring items and compared those amounts to future projections for similar costs.

**Quantitative Impairment Assessment of Goodwill**

*Description of the Matter*

At December 31, 2019, the Company's goodwill was approximately \$685.7 million. As discussed in Note 1 to the consolidated financial statements, goodwill is tested for impairment at least annually at the reporting unit level or at an interim date if potential impairment indicators are present. The Company's goodwill is initially assigned to its reporting units as of the acquisition date. Goodwill is tested for impairment, quantitatively or qualitatively, at the reporting unit level. As it relates to the quantitative approach, the Company uses an income approach to estimate the fair value of the reporting units using a combination of internal forecasts, external market information and discounted cash flow projections.

Auditing the impairment assessment of the quantitative goodwill assessment is complex as the income approach requires the Company to make assumptions and estimates regarding projected economic and market conditions, growth rates, operating margins and cash expenditures. The fair value of the reporting unit is based on a number of subjective factors including; (a) appropriate consideration of valuation approaches, (b) the consideration of the Company's business outlook, and (c) weighted average cost of capital (discount rate), annual and terminal growth rates and market multiples for estimated cash flows.

*How We Addressed the Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the quantitative impairment assessment of goodwill, including controls over management's review of the significant assumptions described above.

To test the estimated fair value of the Company's reporting units, we performed audit procedures that included, among others, assessing methodologies and testing the significant assumptions discussed above and the underlying data used by the Company in its analyses. We compared the significant assumptions used by management to current industry and economic trends. We assessed the historical accuracy of management's estimates and performed sensitivity analyses of significant assumptions to evaluate the changes in the fair value of the reporting units that would result from changes in the assumptions. We also utilized our specialist to assist in the review of the methodology, weighted average cost of capital and terminal growth rates used by the Company.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as PolyOne Corporation's auditor since 1993.

Cleveland, Ohio

February 18, 2020

**35 POLYONE CORPORATION**

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# Consolidated Statements of Income (Loss)

(In millions, except per share data)	Year Ended December 31,		
	2019	2018	2017
Sales	\$ 2,862.7	\$ 2,881.0	\$ 2,590.3
Cost of sales	2,205.5	2,256.2	1,993.9
Gross margin	657.2	624.8	596.4
Selling and administrative expense	500.4	446.2	423.3
Operating income	156.8	178.6	173.1
Interest expense, net	(59.5)	(62.8)	(60.8)
Debt extinguishment costs	—	(1.1)	(0.3)
Other income (expense), net	12.1	(12.9)	(0.1)
Income from continuing operations before income taxes	109.4	101.8	111.9
Income tax expense	(33.7)	(14.4)	(0.8)
Net income from continuing operations	75.7	87.4	111.1
Income (loss) from discontinued operations, net of income taxes	513.1	72.1	(168.7)
Net income (loss)	588.8	159.5	(57.6)
Net (income) loss attributable to noncontrolling interests	(0.2)	0.3	(0.1)
Net income (loss) attributable to PolyOne common shareholders	\$ 588.6	\$ 159.8	\$ (57.7)
Earnings (loss) per share attributable to PolyOne common shareholders - Basic:			
Continuing operations	\$ 0.98	\$ 1.10	\$ 1.36
Discontinued operations	6.64	0.91	(2.07)
Total	\$ 7.62	\$ 2.01	\$ (0.71)
Earnings (loss) per share attributable to PolyOne common shareholders - Diluted:			
Continuing operations	\$ 0.97	\$ 1.09	\$ 1.35
Discontinued operations	6.61	0.90	(2.05)
Total	\$ 7.58	\$ 1.99	\$ (0.70)
Weighted-average shares used to compute earnings per common share:			
Basic	77.2	79.7	81.5
Plus dilutive impact of share-based compensation	0.5	0.7	0.6
Diluted	77.7	80.4	82.1
Anti-dilutive shares not included in diluted common shares outstanding	0.6	—	0.6
Cash dividends declared per share of common stock	\$ 0.788	\$ 0.720	\$ 0.580

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## Consolidated Statements of Comprehensive Income (Loss)

(In millions)	Year Ended December 31,		
	2019	2018	2017
Net income (loss)	\$ 588.8	\$ 159.5	\$ (57.6)
Other comprehensive (loss) income, net of tax:			
Translation adjustments and related hedging instruments	2.2	(27.6)	41.2
Cash flow hedges	(2.5)	(1.3)	—
Other	—	(0.4)	—
Total other comprehensive (loss) income	(0.3)	(29.3)	41.2
Total comprehensive income (loss)	588.5	130.2	(16.4)
Comprehensive (income) loss attributable to noncontrolling interests	(0.2)	0.3	(0.1)
Comprehensive income (loss) attributable to PolyOne common shareholders	<u>\$ 588.3</u>	<u>\$ 130.5</u>	<u>\$ (16.5)</u>

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## Consolidated Balance Sheets

(In millions, except par value per share)	Year Ended December 31,	
	2019	2018
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 864.7	\$ 170.9
Accounts receivable, net	330.0	347.2
Inventories, net	260.9	284.6
Current assets held for sale	—	129.7
Other current assets	57.7	66.4
<b>Total current assets</b>	<b>1,513.3</b>	<b>998.8</b>
Property, net	407.4	384.5
Goodwill	685.7	639.1
Intangible assets, net	469.3	422.4
Operating lease assets, net	63.8	—
Non-current assets held for sale	—	124.5
Other non-current assets	133.8	154.0
<b>Total assets</b>	<b>\$ 3,273.3</b>	<b>\$ 2,723.3</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Short-term and current portion of long-term debt	\$ 18.4	\$ 19.4
Accounts payable	287.7	305.0
Current operating lease obligations	21.0	—
Current liabilities held for sale	—	104.5
Accrued expenses and other current liabilities	375.4	128.7
<b>Total current liabilities</b>	<b>702.5</b>	<b>557.6</b>
Non-current liabilities:		
Long-term debt	1,210.9	1,336.2
Pension and other post-retirement benefits	56.6	54.3
Deferred income taxes	63.5	69.1
Non-current operating lease obligations	42.8	—
Non-current liabilities held for sale	—	3.3
Other non-current liabilities	144.3	162.2
<b>Total non-current liabilities</b>	<b>1,518.1</b>	<b>1,625.1</b>
<b>SHAREHOLDERS' EQUITY</b>		
Common Shares, \$0.01 par, 400.0 shares authorized, 122.2 shares issued	1.2	1.2
Additional paid-in capital	1,175.2	1,166.9
Retained earnings	1,001.2	472.9
Common shares held in treasury, at cost, 45.3 shares in 2019 and 44.5 shares in 2018	(1,043.1)	(1,018.7)
Accumulated other comprehensive loss	(82.6)	(82.3)
<b>PolyOne shareholders' equity</b>	<b>1,051.9</b>	<b>540.0</b>
Noncontrolling interest	0.8	0.6
<b>Total equity</b>	<b>1,052.7</b>	<b>540.6</b>
<b>Total liabilities and equity</b>	<b>\$ 3,273.3</b>	<b>\$ 2,723.3</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## Consolidated Statements of Cash Flows

(In millions)	Year Ended December 31,		
	2019	2018	2017
<b>Operating activities</b>			
Net income (loss)	\$ 588.8	\$ 159.5	\$ (57.6)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
(Gain) Loss on sale of business, net of tax	(457.7)	—	227.7
Depreciation and amortization	87.5	88.5	97.4
Accelerated depreciation and fixed asset charges associated with restructuring activities	—	3.0	0.9
Gain from sale of closed facilities	—	—	(3.6)
Deferred income tax benefit	(3.2)	(4.8)	(1.4)
Debt extinguishment costs	—	1.1	0.3
Share-based compensation expense	12.3	10.9	10.2
Changes in assets and liabilities, net of the effect of acquisitions:			
Decrease (increase) in accounts receivable	29.7	(11.3)	(44.7)
Decrease (increase) in inventories	40.2	(10.6)	(41.1)
(Decrease) increase in accounts payable	(22.7)	7.9	52.2
(Decrease) increase in pension and other post-retirement benefits	(19.7)	4.8	(9.6)
Increase in post-acquisition earnouts	36.4	0.7	—
Increase (decrease) in accrued expenses and other assets and liabilities - net	9.2	4.0	(28.3)
Net cash provided by operating activities	300.8	253.7	202.4
<b>Investing activities</b>			
Capital expenditures	(81.7)	(76.0)	(79.6)
Business acquisitions, net of cash acquired	(119.6)	(98.6)	(163.8)
Net proceeds from divestiture	761.8	—	111.0
Net proceeds from other assets	51.4	4.3	13.0
Net cash provided (used) by investing activities	611.9	(170.3)	(119.4)
<b>Financing activities</b>			
Borrowings under credit facilities	963.4	1,152.9	1,472.9
Repayments under credit facilities	(1,083.9)	(1,090.3)	(1,417.0)
Purchase of common shares for treasury	(26.9)	(123.0)	(70.7)
Cash dividends paid	(60.3)	(56.1)	(44.1)
Repayment of other debt	(1.8)	(16.4)	—
Repayment of long-term debt	(6.5)	(6.5)	(6.5)
Payments on withholding tax on share awards	(2.1)	(4.1)	(4.7)
Debt financing costs	(0.2)	(4.6)	(2.6)
Net cash used by financing activities	(218.3)	(148.1)	(72.7)
Effect of exchange rate changes on cash	(0.6)	(8.0)	6.6
Increase (decrease) in cash and cash equivalents	693.8	(72.7)	16.9
Cash and cash equivalents at beginning of year	170.9	243.6	226.7
<b>Cash and cash equivalents at end of year</b>	<b>\$ 864.7</b>	<b>\$ 170.9</b>	<b>\$ 243.6</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.



## Consolidated Statements of Shareholders' Equity

(In millions)	Common Shares		Shareholders' Equity							
	Common Shares	Common Shares Held in Treasury	Common Shares	Additional Paid-in Capital	Retained Earnings	Common Shares Held in Treasury	Accumulated Other Comprehensive Loss	Total PolyOne shareholders' equity	Non-controlling Interests	Total equity
Balance at January 1, 2017	122.2	(39.6)	\$ 1.2	\$ 1,157.1	\$ 491.2	\$ (830.6)	\$ (94.2)	\$ 724.7	\$ 0.8	\$ 725.5
Net (loss) income	—	—	—	—	(57.7)	—	—	(57.7)	0.1	(57.6)
Other comprehensive income	—	—	—	—	—	—	41.2	41.2	—	41.2
Cash dividends declared <sup>(1)</sup>	—	—	—	—	(46.9)	—	—	(46.9)	—	(46.9)
Repurchase of common shares	—	(2.0)	—	—	—	(70.7)	—	(70.7)	—	(70.7)
Stock-based compensation and exercise of awards	—	0.3	—	4.4	—	3.0	—	7.4	—	7.4
Other <sup>(2)</sup>	—	—	—	—	0.5	—	—	0.5	—	0.5
Balance at December 31, 2017	122.2	(41.3)	\$ 1.2	\$ 1,161.5	\$ 387.1	\$ (898.3)	\$ (53.0)	\$ 598.5	\$ 0.9	\$ 599.4
Net income (loss)	—	—	—	—	159.8	—	—	159.8	(0.3)	159.5
Other comprehensive loss	—	—	—	—	—	—	(29.3)	(29.3)	—	(29.3)
Cash dividends declared <sup>(1)</sup>	—	—	—	—	(57.5)	—	—	(57.5)	—	(57.5)
Repurchase of common shares	—	(3.4)	—	—	—	(123.0)	—	(123.0)	—	(123.0)
Stock-based compensation and exercise of awards	—	0.2	—	5.4	—	2.6	—	8.0	—	8.0
Other <sup>(2)</sup>	—	—	—	—	(16.5)	—	—	(16.5)	—	(16.5)
Balance at December 31, 2018	122.2	(44.5)	\$ 1.2	\$ 1,166.9	\$ 472.9	\$ (1,018.7)	\$ (82.3)	\$ 540.0	\$ 0.6	\$ 540.6
Net income	—	—	—	—	588.6	—	—	588.6	0.2	588.8
Other comprehensive loss	—	—	—	—	—	—	(0.3)	(0.3)	—	(0.3)
Cash dividends declared <sup>(1)</sup>	—	—	—	—	(60.3)	—	—	(60.3)	—	(60.3)
Repurchase of common shares	—	(1.0)	—	—	—	(26.9)	—	(26.9)	—	(26.9)
Stock-based compensation and exercise of awards	—	0.2	—	8.3	—	2.5	—	10.8	—	10.8
Balance at December 31, 2019	122.2	(45.3)	\$ 1.2	\$ 1,175.2	\$ 1,001.2	\$ (1,043.1)	\$ (82.6)	\$ 1,051.9	\$ 0.8	\$ 1,052.7

<sup>(1)</sup> Dividends declared per share were \$0.788, \$0.720, and \$0.580 for the years ended December 31, 2019, 2018, and 2017, respectively.

<sup>(2)</sup> In October 2016, the FASB issued ASU 2016-16, *Income Taxes* (Topic 740), *Intra-Entity Transfers of Assets Other than Inventory* (ASU 2016-16), which requires companies to recognize the income tax effects of intercompany sales or transfers of assets, other than inventory, in the income statement as income tax expense or benefit in the period the sale or transfer occurs. We recognized an adjustment of \$17.0 million to beginning retained earnings upon adoption of this standard on January 1, 2018 from transactions completed as of December 31, 2017.

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### Note 1 — DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Description of Business

We are a premier provider of specialized and sustainable polymer materials and polymer services and solutions. Our products include specialty engineered materials, advanced composites, color and additive systems and polymer distribution. We are also a highly specialized developer and manufacturer of performance enhancing additives, liquid colorants, and fluoropolymer and silicone colorants. Headquartered in Avon Lake, Ohio, we have employees at manufacturing sites and distribution facilities across North America, South America, Europe and Asia. We provide value to our customers through our ability to link our knowledge of polymers and formulation technology with our manufacturing and supply chain to provide value added solutions to designers, assemblers and processors of plastics (our customers). When used in these notes to the consolidated financial statements, the terms “we,” “us,” “our,” “PolyOne” and the “Company” mean PolyOne Corporation and its consolidated subsidiaries.

Our operations are located primarily in North America, South America, Europe and Asia. Our operations are reported in three reportable segments: Color, Additives and Inks; Specialty Engineered Materials; and Distribution. See Note 14, *Segment Information*, for more information.

#### Accounting Standards Adopted

On January 1, 2019, the Company adopted Accounting Standards Codification (ASC) 842, *Leases* (ASC 842). ASC 842 was issued to increase transparency and comparability among entities by recognizing right-of-use assets and lease liabilities on the balance sheet and disclosing key information about lease arrangements.

We elected to transition to ASC 842 using the option to apply the standard on its effective date, January 1, 2019. The comparative periods presented reflect the former lease accounting guidance and the required comparative disclosures are included in Note 6, *Leasing Arrangements*. There was not a material cumulative-effect adjustment to our beginning retained earnings as a result of adopting ASC 842. We have recognized additional operating lease assets and obligations of \$72.3 million and \$63.8 million as of January 1, 2019 and December 31, 2019, respectively. We elected to not reassess prior conclusions related to the identification, classification and accounting for initial direct costs for leases that commenced prior to January 1, 2019. Additionally, we elected to not use hindsight to determine lease terms and to not separate non-lease components within our lease portfolio. For additional disclosure and detail, see Note 6, *Leasing Arrangements*.

In March 2017, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2017-07, *Compensation - Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost* (ASU 2017-07). This standard requires the presentation of the service cost component of the net periodic benefit cost in the same income statement line item as other employee compensation costs arising from services rendered during the period. All other components of net periodic benefit cost must be presented below operating income. The Company has adopted ASU 2017-07 on January 1, 2018.

ASU 2017-07 provides a practical expedient to utilize previously disclosed components of net periodic benefit costs as an estimate for retrospective presentation. Utilizing this practical expedient, the Company reclassified non-service components of net periodic benefit cost from Cost of sales and Selling and administrative expense into Other income, net on the Consolidated Statements of Income. The adoption of ASU 2017-07 resulted in \$9.6 million of costs for the year ended December 31, 2018 and a gain of \$4.7 million for the year ended December 31, 2017 of the non-service components of net periodic benefit presented in Other income, net. For additional detail on the components of our annual net periodic benefit cost, see Note 10, *Employee Benefit Plans*.

In October 2016, the FASB issued ASU 2016-16, *Income Taxes (Topic 740), Intra-Entity Transfers of Assets Other than Inventory* (ASU 2016-16), which requires companies to recognize the income tax effects of intercompany sales or transfers of assets, other than inventory, in the income statement as income tax expense or benefit in the period the sale or transfer occurs. We recognized an adjustment of \$17.0 million to beginning retained earnings upon adoption of this standard on January 1, 2018 from transactions completed as of December 31, 2017.

#### Accounting Standards Not Yet Adopted

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (ASU 2016-13). ASU 2016-13 changes the impairment model for most financial instruments. Current guidance requires the recognition of credit losses based on an incurred loss impairment methodology that reflects losses once the losses are probable. Under ASU 2016-13, the Company will be required to use a current expected credit loss model (CECL) that will immediately recognize an estimate of credit losses that are expected to occur over the life of the financial instruments that are in the scope of this update,

including trade receivables. The CECL model uses a broader range of reasonable and supportable information in the development of credit loss estimates. This guidance became effective for the Company on January 1, 2020, including the interim periods in the year. The Company is in the process of finalizing the business processes and controls to support recognition of credit losses and related disclosures under the new standard. We currently do not expect ASU 2016-13 to have a material effect on our consolidated financial statements and related disclosures.

### **Consolidation and Basis of Presentation**

The consolidated financial statements include the accounts of PolyOne and its subsidiaries. All majority-owned affiliates over which we have control are consolidated. Transactions with related parties, including joint ventures, are in the ordinary course of business.

Historical information has been retrospectively adjusted to reflect the classification of discontinued operations. Discontinued operations are further discussed in Note 3, *Discontinued Operations*.

### **Use of Estimates**

Preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions in certain circumstances that affect amounts reported in the accompanying consolidated financial statements and notes. Actual results could differ from these estimates.

### **Cash and Cash Equivalents**

We consider all highly liquid investments purchased with a maturity of less than three months to be cash equivalents. Cash equivalents are stated at cost, which approximates fair value.

### **Allowance for Doubtful Accounts**

We evaluate the collectability of receivables based on a combination of factors, each of which are adjusted if specific circumstances change. We reserve for amounts determined to be uncollectible based on a specific customer's inability to meet its financial obligation to us. We also record a general reserve based on the age of receivables past due, economic conditions and historical experience. In estimating the allowance, we take into consideration the existence of credit insurance. The allowance for doubtful accounts was \$2.6 million and \$2.3 million as of December 31, 2019 and 2018, respectively.

### **Inventories**

External purchases of raw materials and finished goods are valued at weighted average cost. Raw materials and finished goods are stated at the lower of cost or market using the first-in, first-out (FIFO) method.

### **Long-lived Assets**

Property, plant and equipment is carried at cost, net of depreciation and amortization that is computed using the straight-line method over the estimated useful lives of the assets, which generally ranges from three to 15 years for machinery and equipment and up to 40 years for buildings. We depreciate certain assets associated with closing manufacturing locations over a shortened life (through the cease-use date). Software is amortized over periods not exceeding 10 years. Property, plant and equipment is generally depreciated on accelerated methods for income tax purposes. We expense repair and maintenance costs as incurred. We capitalize replacements and betterments that increase the estimated useful life of an asset.

We retain fully depreciated assets in property and accumulated depreciation accounts until we remove them from service. In the case of sale, retirement or disposal, the asset cost and related accumulated depreciation balance is removed from the respective account, and the resulting net amount, less any proceeds, is included as a component of income from continuing operations in the accompanying Consolidated Statements of Income (Loss).

We account for operating and capital leases under the provisions of FASB ASC Topic 842, *Leases*.

Finite-lived intangible assets, which consist primarily of customer relationships, patents and technology are amortized over their estimated useful lives. The remaining useful lives range up to 20 years.

We assess the recoverability of long-lived assets when events or changes in circumstances indicate that we may not be able to recover the assets' carrying amount. We measure the recoverability of assets to be held and used by a comparison of the carrying amount of the asset to the expected future undiscounted cash flows associated with the asset. We measure the amount of impairment of long-lived assets as the amount by which the carrying value of the asset exceeds the fair value of the asset, which is generally determined based on projected discounted future cash flows or appraised values. No such impairments were recognized during 2019, 2018 or 2017.

## Goodwill and Indefinite Lived Intangible Assets

In accordance with the provisions of FASB ASC Topic 350, *Intangibles — Goodwill and Other*, we assess the fair value of goodwill, quantitatively or qualitatively, on an annual basis or at an interim date if potential impairment indicators are present. Goodwill is the excess of the purchase price paid over the fair value of the net assets of the acquired business. Goodwill is tested for impairment, quantitatively or qualitatively, at the reporting unit level. Our reporting units have been identified at the operating segment level, or in most cases, one level below the operating segment level. Goodwill is allocated to the reporting units based on the estimated fair value at the date of acquisition.

Our annual measurement date for testing impairment of goodwill and indefinite-lived intangibles is October 1. We completed our testing of impairment as of October 1, noting no impairment in 2019, 2018 or 2017. There are no reporting units identified as at-risk of future impairment. The future occurrence of a potential indicator of impairment would require an interim assessment for some or all of the reporting units prior to the next required annual assessment on October 1, 2020.

We test our goodwill either quantitatively or qualitatively for impairment. For our quantitative approach, we use an income approach to estimate the fair value of our reporting units. The income approach uses a reporting unit's projection of estimated operating results and cash flows that is discounted using a weighted-average cost of capital that is determined based on current market conditions. The projection uses management's best estimates of economic and market conditions over the projected period including growth rates in sales, costs and number of units, estimates of future expected changes in operating margins and cash expenditures. Other significant estimates and assumptions include terminal value growth rates, terminal value margin rates, future capital expenditures and changes in future working capital requirements. We validate our estimates of fair value under the income approach by considering the implied control premium and conclude whether the implied control premium is reasonable based on other recent market transactions.

A qualitative approach for both goodwill and indefinite-lived intangible assets is performed if the last quantitative test exceeded certain thresholds. During our qualitative approach, we assess whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events and circumstances, we determine it is more likely than not that the fair value is less than carrying value, a quantitative impairment test is performed for each asset, as described above.

Indefinite-lived intangible assets primarily consist of the GLS, ColorMatrix, Gordon Composites, and Fiber-Line trade names. Indefinite-lived intangible assets are tested, quantitatively or qualitatively, for impairment annually at the same time we test goodwill for impairment. For our quantitative approach, the implied fair value of indefinite-lived intangible assets is determined based on significant unobservable inputs, as summarized below. The fair value of the trade names is calculated using a "relief from royalty" methodology. This approach involves two steps (1) estimating reasonable royalty rates for the trade name and (2) applying this royalty rate to a net sales stream and discounting the resulting cash flows to determine fair value using a weighted-average cost of capital that is determined based on current market conditions. This fair value is then compared with the carrying value of the trade name.

## Litigation Reserves

FASB ASC Topic 450, *Contingencies*, requires that we accrue for loss contingencies associated with outstanding litigation, claims and assessments for which management has determined it is probable that a loss contingency exists and the amount of loss can be reasonably estimated. We recognize expense associated with professional fees related to litigation claims and assessments as incurred. Refer to Note 11, *Commitments and Contingencies*, for further information.

## Derivative Financial Instruments

FASB ASC Topic 815, *Derivative and Hedging*, requires that all derivative financial instruments, such as foreign exchange contracts, be recognized in the financial statements and measured at fair value, regardless of the purpose or intent in holding them.

We are exposed to foreign currency changes and to changes in cash flows due to changes in our contractually specified interest rates (e.g., LIBOR) in the normal course of business. We have established policies and procedures that manage this exposure through the use of financial instruments. By policy, we do not enter into these instruments for trading purposes or speculation. We formally assess, designate and document, as a hedge of an underlying exposure, the qualifying derivative instrument that will be accounted for as an accounting hedge at inception. Additionally, in accordance with ASU 2017-12, we assess at inception whether the financial instruments

used in the hedging transaction are highly effective at offsetting changes in either the fair values or cash flows of the underlying exposures. If highly effective, any subsequent test may be done qualitatively.

The net interest payments accrued each month for effective instruments designated as a hedge are reflected in net income as adjustments of interest expense and the remaining change in the fair value of the derivatives is recorded as a component of *Accumulated Other Comprehensive Income (AOCI)*. Instruments not designated as hedges are adjusted to fair value at each period end, with the resulting gains and losses recognized in the accompanying Consolidated Statements of Income (Loss) immediately.

Refer to Note 15, *Derivatives and Hedging*, for more information.

### Pension and Other Post-retirement Plans

We account for our pensions and other post-retirement benefits in accordance with FASB ASC Topic 715, *Compensation — Retirement Benefits*. We immediately recognize actuarial gains and losses in our operating results in the year in which the gains or losses occur. Refer to Note 10, *Employee Benefit Plans*, for more information.

### Accumulated Other Comprehensive Loss

Changes in accumulated other comprehensive loss in 2019, 2018 and 2017 were as follows:

(In millions)	Cumulative Translation Adjustment and Related Hedging Instruments	Pension and other post-retirement benefits	Cash Flow Hedges	Other	Total
Balance at January 1, 2017	\$ (99.8)	\$ 5.2	\$ —	\$ 0.4	\$ (94.2)
Translation Adjustments	41.2	—	—	—	41.2
Balance at December 31, 2017	(58.6)	5.2	—	0.4	(53.0)
Translation Adjustments	(25.6)	—	—	—	(25.6)
Unrealized losses	(2.0)	—	(1.3)	—	(3.3)
Other	—	—	—	(0.4)	(0.4)
Balance at December 31, 2018	(86.2)	5.2	(1.3)	—	(82.3)
Translation Adjustments	(6.9)	—	—	—	(6.9)
Unrealized gains (losses)	9.1	—	(2.5)	—	6.6
Balance at December 31, 2019	<u>\$ (84.0)</u>	<u>\$ 5.2</u>	<u>\$ (3.8)</u>	<u>\$ —</u>	<u>\$ (82.6)</u>

### Fair Value of Financial Instruments

FASB ASC Topic 820, *Fair Value Measurements and Disclosures*, requires disclosures of the fair value of financial instruments. The estimated fair values of financial instruments were principally based on market prices where such prices were available and, where unavailable, fair values were estimated based on market prices of similar instruments.

### Foreign Currency Translation

Revenues and expenses are translated at average currency exchange rates during the related period. Assets and liabilities of foreign subsidiaries are translated using the exchange rate at the end of the period. The resulting translation adjustments are recorded as accumulated other comprehensive income or loss. Gains and losses resulting from foreign currency transactions, including intercompany transactions that are not considered long-term investments, are included in *Other income (expense), net* in the accompanying Consolidated Statements of Income (Loss).

### Revenue Recognition

We recognize revenue once control of the product is transferred to the customer, which typically occurs when products are shipped from our facilities.

### Shipping and Handling Costs

Shipping and handling costs are included in cost of sales.

### Research and Development Expense

Research and development costs of \$50.6 million in 2019, \$49.6 million in 2018 and \$45.3 million in 2017 are charged to expense as incurred.

## Environmental Costs

We expense costs that are associated with managing hazardous substances and pollution in ongoing operations on a current basis. Costs associated with environmental contamination are accrued when it becomes probable that a liability has been incurred and our proportionate share of the cost can be reasonably estimated. Any such provision is recognized using the Company's best estimate of the amount of loss incurred, or at the lower end of an estimated range, when a single best estimate is not determinable. In some cases, the Company may be able to recover a portion of the costs relating to these obligations from insurers or other third parties; however, the Company records such amounts only when they are collected.

## Share-Based Compensation

We account for share-based compensation under the provisions of FASB ASC Topic 718, *Compensation - Stock Compensation*, which requires us to estimate the fair value of share-based awards on the date of grant. The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service periods in the accompanying Consolidated Statements of Income (Loss). As of December 31, 2019, we had one active share-based employee compensation plan, which is described more fully in Note 13, *Share-Based Compensation*.

## Income Taxes

Deferred income tax liabilities and assets are determined based upon the differences between the financial reporting and tax basis of assets and liabilities and are measured using the tax rate and laws currently in effect. In accordance with FASB ASC Topic 740, *Income Taxes*, we evaluate our deferred income taxes to determine whether a valuation allowance should be established against the deferred tax assets or whether the valuation allowance should be reduced based on consideration of all available evidence, both positive and negative, using a "more likely than not" standard. See Note 12, *Income Taxes*, for additional detail.

## Note 2 — BUSINESS COMBINATIONS

On December 19, 2019, we entered into a definitive share purchase agreement (the Agreement) with Clariant AG, a corporation organized and existing under the laws of Switzerland (Clariant), and through one of our wholly owned subsidiaries, a definitive business transfer agreement (the BTA), with Clariant Chemicals (India) Limited, a public limited company incorporated in India and an indirect majority-owned subsidiary of Clariant (Clariant India). Pursuant to the Agreement, we have agreed to acquire Clariant's global masterbatch business outside of India, and pursuant to the BTA, we have agreed to purchase Clariant India's masterbatch business, for a net purchase price of \$1.45 billion in cash, subject to customary working capital and net debt adjustments. Each of the Agreement and the BTA contain certain customary termination rights, and, with respect to the Agreement only, the requirement that PolyOne pay a termination fee in the event the Agreement is terminated under certain conditions. The closing of each acquisition is expected to occur in mid-2020, subject to the receipt of regulatory approvals, the satisfaction or waiver of customary closing conditions and, in the case of the Clariant India masterbatch acquisition, shareholder approval of Clariant India. In connection with the Clariant Acquisition, on December 19, 2019, we entered into a Commitment Letter with a number of banks (the Commitment Parties), pursuant to which the Commitment Parties have provided a 12-month commitment for a \$1.15 billion senior unsecured bridge loan facility (the Bridge Facility) for purposes of funding the Clariant Acquisition. The Commitment Parties' commitments under the Bridge Facility were subsequently reduced on a dollar-for-dollar basis by the net proceeds from the issuance of common shares described below. The Company currently intends to issue new senior unsecured notes in lieu of borrowing under the Bridge Facility. We intend to use (i) a portion of the net proceeds from the sale of our Performance Products and Solutions segment (PP&S), (ii) the net proceeds from the issuance of common shares in an underwritten public offering that we completed in February 2020 and (iii) the net proceeds of a senior unsecured notes offering to finance the Clariant Acquisition, including the payment of related fees and expenses.

On January 2, 2019, the Company acquired Fiber-Line, LLC (Fiber-Line), a global leader in polymer coated engineered fibers and composite materials, for total consideration of \$152.7 million, net of cash acquired and inclusive of contingent consideration. Fiber-Line's results are reported in the Specialty Engineered Materials segment. The purchase price allocation resulted in intangible assets of \$77.1 million, goodwill of \$47.0 million, and net working capital of \$24.9 million. Of the total goodwill, \$22.9 million was deductible for U.S. federal income tax purposes. The definite-lived intangible assets that have been acquired are being amortized over a period of five to 19 years. Fiber-Line's sales included in the Company's results for the twelve months ended December 31, 2019 were \$114.7 million.

Our acquisitions of PlastiComp, Inc. (PlastiComp) on May 31, 2018 and Fiber-Line have contingent consideration that includes earnouts payable over periods of up to two years in the event that certain operating results are

achieved. The PlastiComp earnout has a ceiling of \$35 million. The Fiber-Line earnout is based on two annual earnout periods, with the second earnout period target based on year-one results. We estimate the total earnout payment for Fiber-Line to be in the range of \$55 to \$70 million. The earnouts are considered Level 3 under the fair value hierarchy as the fair value is based on unobservable inputs, which require PolyOne to develop its own assumptions. The earnouts are valued each quarter using Monte Carlo simulation analyses in a risk-neutral framework with assumptions for volatility, risk-free rate and dividend yield. As of December 31, 2019, we had recorded a total of \$87.9 million of contingent consideration liabilities for both acquisitions, all of which was reflected within *Accrued expenses and other current liabilities* on the Condensed Consolidated Balance Sheets. During the twelve months ended December 31, 2019, the Company recorded charges of \$36.4 million, associated with the earnouts within *Selling and administrative expense* on the Condensed Consolidated Statements of Income that was primarily attributable to improved earnings from the acquisitions.

The fair value of intangible assets acquired during the year ended December 31, 2019, including their estimated useful lives are as follows:

(In millions)	Fair Value	Useful Life
Customer relationships	\$ 9.0	16
Patents, technology and other	58.9	5 - 19
Indefinite-lived trade names	9.2	N/A
Total	<u>\$ 77.1</u>	

### Note 3 — DISCONTINUED OPERATIONS

On July 19, 2017, PolyOne divested its Designed Structures and Solutions segment (DSS) for \$115.0 million cash. The sale resulted in the recognition of an after-tax loss of \$229.0 million that was primarily recognized during the second quarter of 2017.

The following table summarizes the discontinued operations associated with DSS for the years ended December 31, 2018 and 2017, which is reflected within the *Loss from discontinued operations, net of income taxes* line of the Consolidated Statements of Income (Loss):

(In millions)	2018	2017
Sales	\$ —	\$ 222.1
Loss on sale	\$ (1.8)	\$ (295.6)
Loss from Operations	—	(8.6)
Loss before taxes	(1.8)	(304.2)
Income tax benefit	0.5	73.0
Loss from discontinued operations, net of taxes	<u>\$ (1.3)</u>	<u>\$ (231.2)</u>

On October 25, 2019, PolyOne divested PP&S for \$775.0 million cash subject to a customary working capital adjustment. The sale resulted in the recognition of an after-tax gain of \$457.7 million, which is reflected within the *Income (loss) from discontinued operations, net of income taxes* line of the Consolidated Statements of Income (Loss).

PolyOne has continuing involvement with the former PP&S business following the close of the transaction. The Company entered into a four-year distribution agreement with the former PP&S business to be the exclusive distributor for certain products, under terms that were similar prior to the disposal transaction. PolyOne and the former PP&S business have also entered into contract manufacturing and supply agreements for certain products for a two-year period.

The following table summarizes the discontinued operations associated with PP&S for the years ended December 31, 2019, 2018 and 2017, which is reflected within the *Income (loss) from discontinued operations, net of income taxes* line of the Consolidated Statements of Income (Loss):

(In millions)	2019	2018	2017
Sales	\$ 488.9	\$ 652.4	\$ 639.6
Cost of sales	(390.1)	(532.3)	(517.1)
Selling and administrative expense	(28.0)	(24.7)	(22.1)
Gain on sale	591.2	—	—
Pretax income of discontinued operations	662.0	95.4	100.4
Income tax expense	(148.9)	(22.0)	(37.9)
Income from discontinued operations, net of taxes	<u>\$ 513.1</u>	<u>\$ 73.4</u>	<u>\$ 62.5</u>

The following table summarizes the major classes of assets and liabilities of PP&S that were classified as held for sale in the consolidated balance sheets as of December 31, 2018:

(In millions)	Year Ended December 31, 2018
<b>Assets:</b>	
Current assets:	
Accounts receivable, net	\$ 66.2
Inventories, net	60.1
Other current assets	3.4
Current assets held for sale	129.7
Non-current assets:	
Property, net	\$ 110.9
Goodwill	11.2
Other non-current assets	2.4
Non-current assets held for sale	124.5
Total assets held for sale	<u>\$ 254.2</u>
<b>Liabilities</b>	
Current liabilities:	
Accounts payable	\$ 94.0
Other current liabilities	10.5
Current liabilities held for sale	104.5
Non-current liabilities held for sale	3.3
Total liabilities held for sale	<u>\$ 107.8</u>

The following table presents the depreciation, amortization, and capital expenditures of our discontinued operations for the twelve months ended December 31, 2019, 2018 and 2017. There were no other significant operating or investing non-cash items for the twelve months ended December 31, 2019, 2018 and 2017.

(In millions)	Year Ended December 31,		
	2019	2018	2017
Depreciation and amortization	\$ 9.4	\$ 15.9	\$ 30.1
Capital Expenditures	14.1	19.5	25.2



#### Note 4 — GOODWILL AND INTANGIBLE ASSETS

The total purchase price associated with acquisitions is allocated to the fair value of assets acquired and liabilities assumed based on their fair values at the acquisition date, with excess amounts recorded as goodwill.

Goodwill as of December 31, 2019 and 2018 and changes in the carrying amount of goodwill by segment were as follows:

(In millions)	Specialty Engineered Materials	Color, Additives and Inks	PolyOne Distribution	Total
Balance at January 1, 2018	\$ 173.2	\$ 424.5	\$ 1.6	\$ 599.3
Acquisition of businesses	16.3	25.8	—	42.1
Currency translation	(0.6)	(1.7)	—	(2.3)
Balance at December 31, 2018	188.9	448.6	1.6	639.1
Acquisition of businesses	47.9	—	—	47.9
Currency translation	(0.5)	(0.8)	—	(1.3)
Balance at December 31, 2019	\$ 236.3	\$ 447.8	\$ 1.6	\$ 685.7

Indefinite and finite-lived intangible assets consisted of the following:

As of December 31, 2019				
(In millions)	Acquisition Cost	Accumulated Amortization	Currency Translation	Net
Customer relationships	\$ 286.8	\$ (89.1)	\$ (1.0)	\$ 196.7
Patents, technology and other	244.0	(79.6)	(1.3)	163.1
Indefinite-lived trade names	109.5	—	—	109.5
Total	\$ 640.3	\$ (168.7)	\$ (2.3)	\$ 469.3

As of December 31, 2018				
(In millions)	Acquisition Cost	Accumulated Amortization	Currency Translation	Net
Customer relationships	\$ 277.8	\$ (74.8)	\$ (0.7)	\$ 202.3
Patents, technology and other	185.1	(64.4)	(0.9)	119.8
Indefinite-lived trade names	100.3	—	—	100.3
Total	\$ 563.2	\$ (139.2)	\$ (1.6)	\$ 422.4

Amortization of finite-lived intangible assets included in continuing operations for the years ended December 31, 2019, 2018 and 2017 was \$29.5 million, \$25.5 million and \$21.2 million, respectively.

We expect finite-lived intangibles amortization expense for the next five years as follows:

(In millions)	2020	2021	2022	2023	2024
Expected Amortization Expense	\$ 28.9	\$ 28.7	\$ 26.7	\$ 24.3	\$ 24.2

## Note 5 — FINANCING ARRANGEMENTS

For each of the periods presented, total debt consisted of the following:

As of December 31, 2019 (in millions)	Principal Amount	Unamortized discount and debt issuance cost	Net Debt	Weighted average interest rate
Senior secured revolving credit facility due 2022	\$ —	\$ —	\$ —	3.90 %
Senior secured term loan due 2026	624.5	9.8	614.7	4.01 %
5.25% senior notes due 2023	600.0	3.7	596.3	5.25 %
Other Debt	18.3	—	18.3	
Total Debt	\$ 1,242.8	\$ 13.5	\$ 1,229.3	
Less short-term and current portion of long-term debt	18.4	—	18.4	
Total long-term debt, net of current portion	\$ 1,224.4	\$ 13.5	\$ 1,210.9	

As of December 31, 2018 (in millions)	Principal Amount	Unamortized discount and debt issuance cost	Net Debt	Weighted average interest rate
Senior secured revolving credit facility due 2022	\$ 120.1	\$ —	\$ 120.1	3.35 %
Senior secured term loan due 2026	631.0	11.2	619.8	3.80 %
5.25% senior notes due 2023	600.0	5.0	595.0	5.25 %
Other Debt	20.7	—	20.7	
Total Debt	\$ 1,371.8	\$ 16.2	\$ 1,355.6	
Less short-term and current portion of long-term debt	19.4	—	19.4	
Total long-term debt, net of current portion	\$ 1,352.4	\$ 16.2	\$ 1,336.2	

On April 11, 2018, the Company entered into a fifth amendment to its senior secured term loan. Under the terms of the amended senior secured term loan, the margin was reduced by 25 basis points to 175 basis points. At the Company's discretion, interest is based upon (i) a margin rate of 175 basis points plus the 1-, 2-, 3-, or 6-month LIBOR, subject to a floor of 75 basis points, or (ii) a margin rate of 75 basis points plus a Prime Rate, subject to a floor of 175 basis points. On November 9, 2018, the Company entered into a sixth amendment to its senior secured term loan, which extended the maturity to 2026. Repayments in the amount of one percent of the aggregate principal amount as of August 3, 2016 are payable annually, while the remaining balance matures on January 30, 2026. The total principal repayments for the year ended December 31, 2019 were \$6.5 million.

The Company maintains a senior secured revolving credit facility, which matures on February 24, 2022 and provides a maximum borrowing facility size of \$450.0 million, subject to a borrowing base with advances against certain U.S. and Canadian accounts receivable, inventory and other assets as specified in the agreement. On June 28, 2019, the Company amended and restated its senior secured revolving credit facility to, among other things, add a European line of credit, up to the euro equivalent of \$50.0 million, subject to a borrowing base with advances against certain European accounts receivable. Advances under the U.S. portion of our revolving credit facility bear interest, at the Company's option, at a Base Rate or a LIBOR Rate plus an applicable margin. The Base Rate is a fluctuating rate equal to the greater of (i) the Federal Funds Rate plus one-half percent, (ii) the prevailing LIBOR Rate plus one percent, and (iii) the prevailing Prime Rate. The applicable margins vary based on the Company's daily average excess availability during the previous quarter. As of December 31, 2019, we had no borrowings under our revolving credit facility, which had remaining availability of \$279.4 million. As of December 31, 2018, we had borrowings of \$120.1 million under our revolving credit facility, which had remaining availability of \$279.4 million.

The agreements governing our revolving credit facility and our senior secured term loan, and the indentures and credit agreements governing other debt, contain a number of customary financial and restrictive covenants that, among other things, limit our ability to: sell or otherwise transfer assets, including in a spin-off, incur additional debt or liens, consolidate or merge with any entity or transfer or sell all or substantially all of our assets, pay dividends or make certain other restricted payments, make investments, enter into transactions with affiliates, create dividend or other payment restrictions with respect to subsidiaries, make capital investments and alter the business we conduct. As of December 31, 2019, we were in compliance with all covenants.

As of both December 31, 2019 and 2018, the Company maintained a credit line of \$12.0 million with Saudi Hollandi Bank. The credit line has an interest rate equal to the Saudi Arabia Interbank Offered Rate plus a fixed rate of

0.85% and is subject to annual renewal. Borrowings under the credit line were primarily used to fund capital expenditures related to the manufacturing facility in Jeddah, Saudi Arabia. As of December 31, 2019, letters of credit under the credit line were immaterial and borrowings were \$10.3 million with a weighted average annual interest rate of 3.14%. As of December 31, 2018, letters of credit under the credit line were immaterial and borrowings were \$10.7 million with a weighted average annual interest rate of 3.35%. As of December 31, 2019 and 2018, there was remaining availability on the credit line of \$1.7 million and \$1.3 million, respectively.

The estimated fair value of PolyOne's debt instruments at December 31, 2019 and 2018 was \$1,271.8 million and \$1,316.8 million, respectively, compared to carrying values of \$1,229.3 million and \$1,355.6 million as of December 31, 2019 and 2018, respectively. The fair value of PolyOne's debt instruments was estimated using prevailing market interest rates on debt with similar creditworthiness, terms and maturities and represent Level 2 measurements within the fair value hierarchy.

Aggregate maturities of the principal amount of debt for the next five years and thereafter are as follows:

(In millions)	
2020	\$ 18.4
2021	7.5
2022	7.2
2023	607.0
2024	7.0
Thereafter	595.7
Aggregate maturities	<u>\$ 1,242.8</u>

Included in *Interest expense, net* for the years ended December 31, 2019, 2018 and 2017 was interest income of \$11.0 million, \$3.1 million, and \$0.7 million, respectively. Total interest paid on debt was \$67.0 million in 2019, \$61.0 million in 2018 and \$59.4 million in 2017.

## Note 6 — LEASING ARRANGEMENTS

We lease certain manufacturing facilities, warehouse space, machinery and equipment, vehicles and information technology equipment under operating leases. The majority of our leases are operating leases. Finance leases are immaterial to our condensed consolidated financial statements. Operating lease assets and obligations are reflected within *Operating lease assets, net*, *Current operating lease obligations*, and *Non-current operating lease obligations*, respectively, on the Condensed Consolidated Balance Sheets.

Lease expense for these leases is recognized on a straight-line basis over the lease term, with variable lease payments recognized in the period those payments are incurred. The components of lease cost from continued operations recognized within our Condensed Consolidated Statements of Income were as follows:

(in millions)	Condensed Consolidated Statements of Income Location	Year-Ended December 31, 2019
Lease Cost		
Operating lease cost	Cost of Sales	\$ 10.9
Operating lease cost	Selling and administrative expense	11.3
Other <sup>(1)</sup>	Selling and administrative expense	1.8
Total Operating lease cost		<u>\$ 24.0</u>

(1) Other lease costs include short-term lease costs and variable lease costs

We often have options to renew lease terms for buildings and other assets. The exercise of lease renewal options are generally at our sole discretion. In addition, certain lease arrangements may be terminated prior to their original expiration date at our discretion. We evaluate renewal and termination options at the lease commencement date to determine if we are reasonably certain to exercise the option on the basis of economic factors. The weighted average remaining lease term for our operating leases as of December 31, 2019 was 4.0 years.

The discount rate implicit within our leases is generally not determinable and, therefore, the Company determines the discount rate based on its incremental borrowing rate. The incremental borrowing rate for our leases is determined based on lease term and currency in which lease payments are made, adjusted for impacts of collateral.

The weighted average discount rate used to measure our operating lease liabilities as of December 31, 2019 was 7.9%.

Future minimum lease payments under non-cancelable operating leases with initial lease terms longer than one year as of December 31, 2019 are as follows:

**Maturity Analysis of Lease Liabilities:**

	<b>As of December 31, 2019</b>	
<b>(in millions)</b>	<b>Operating Leases</b>	
2020	\$	24.0
2021		16.0
2022		11.3
2023		8.1
2024		4.5
Thereafter		7.8
Total	\$	71.7
Less amount of lease payment representing interest		(7.9)
Total present value of lease payments	\$	63.8

	<b>As of December 31, 2018</b>	
<b>(in millions)</b>	<b>Operating Leases</b>	
2019	\$	24.5
2020		20.4
2021		12.4
2022		8.5
2023		5.8
Thereafter		9.0
Total	\$	80.6

**Note 7 — INVENTORIES, NET**

Components of *Inventories, net* are as follows:

<b>(In millions)</b>	<b>December 31, 2019</b>		<b>December 31, 2018</b>	
Finished products	\$	157.6	\$	174.6
Work in process		8.0		6.4
Raw materials and supplies		95.3		103.6
Inventories, net	\$	260.9	\$	284.6

**Note 8 — PROPERTY, NET**

Components of *Property, net* are as follows:

<b>(In millions)</b>	<b>December 31, 2019</b>		<b>December 31, 2018</b>	
Land and land improvements	\$	32.8	\$	32.6
Buildings		231.8		226.4
Machinery and equipment		748.9		705.0
Property, gross		1,013.5		964.0
Less accumulated depreciation		(606.1)		(579.5)
Property, net	\$	407.4	\$	384.5

Depreciation expense from continuing operations was \$48.6 million in 2019, \$47.1 million in 2018 and \$46.1 million in 2017.

## Note 9 — OTHER BALANCE SHEET LIABILITIES

Other liabilities at December 31, 2019 and 2018 consist of the following:

(in millions)	Accrued expenses and other current liabilities		Other non-current liabilities	
	December 31,		December 31,	
	2019	2018	2019	2018
Employment costs	\$ 68.6	\$ 47.5	\$ 20.5	\$ 18.0
Earnouts payable	87.9	18.6	—	—
Environmental liabilities	11.2	9.9	100.8	102.0
Accrued taxes	165.4	15.3	—	—
Pension and other post-employment benefits	4.8	4.9	—	—
Accrued interest	10.0	10.8	—	—
Dividends payable	15.6	15.6	—	—
Unrecognized tax benefits	0.7	1.7	11.9	16.1
Other	11.2	4.4	11.1	26.1
Total	<u>\$ 375.4</u>	<u>\$ 128.7</u>	<u>\$ 144.3</u>	<u>\$ 162.2</u>

## Note 10 — EMPLOYEE BENEFIT PLANS

We recognize actuarial gains and losses in our operating results in the year in which the gains or losses occur. These gains and losses are generally only measured annually as of December 31 and, accordingly, are recorded during the fourth quarter of each year. We recognized a benefit of \$9.6 million in the fourth quarter of 2019 and charges of \$15.6 million and \$3.3 million in the fourth quarter of 2018 and 2017, respectively, related to the actuarial losses during the year.

All U.S. qualified defined benefit pension plans are frozen, no longer accrue benefits and are closed to new participants. We have foreign pension plans that accrue benefits. The plans generally provide benefit payments using a formula that is based upon employee compensation and length of service.

The following tables present the change in benefit obligation, change in plan assets and components of funded status for defined benefit pension and post-retirement health care benefit plans.

(in millions)	Pension Benefits		Health Care Benefits	
	2019	2018	2019	2018
Change in benefit obligation:				
Projected benefit obligation - beginning of year	\$ 462.7	\$ 507.7	\$ 7.4	\$ 8.8
Service cost	0.5	0.6	—	—
Interest cost	18.2	17.6	0.2	0.3
Actuarial loss (gain)	34.0	(23.9)	0.1	(0.6)
Benefits paid	(36.9)	(37.7)	(0.8)	(0.8)
Other	(0.5)	(1.6)	0.2	(0.3)
Projected benefit obligation - end of year	<u>\$ 478.0</u>	<u>\$ 462.7</u>	<u>\$ 7.1</u>	<u>\$ 7.4</u>
Projected salary increases	(1.9)	(1.6)	—	—
Accumulated benefit obligation	<u>\$ 476.1</u>	<u>\$ 461.1</u>	<u>\$ 7.1</u>	<u>\$ 7.4</u>
Change in plan assets:				
Plan assets - beginning of year	\$ 434.4	\$ 484.7	\$ —	\$ —
Actual return (loss) on plan assets	67.4	(16.4)	—	—
Company contributions	4.4	4.5	0.8	0.8
Benefits paid	(36.9)	(37.7)	(0.8)	(0.8)
Other	(0.2)	(0.7)	—	—
Plan assets - end of year	<u>\$ 469.1</u>	<u>\$ 434.4</u>	<u>\$ —</u>	<u>\$ —</u>
Unfunded status at end of year	<u>\$ (8.9)</u>	<u>\$ (28.3)</u>	<u>\$ (7.1)</u>	<u>\$ (7.4)</u>

Amounts included in the accompanying Consolidated Balance Sheets as of December 31 are as follows:

(in millions)	Pension Benefits		Health Care Benefits	
	2019	2018	2019	2018
Non-current assets	\$ 45.4	\$ 23.5	\$ —	\$ —
Accrued expenses and other liabilities	4.0	4.1	0.8	0.8
Other non-current liabilities	50.3	47.7	6.3	6.6

As of December 31, 2019 and 2018, we had plans with total projected and accumulated benefit obligations in excess of the related plan assets as follows:

(in millions)	Pension Benefits		Health Care Benefits	
	2019	2018	2019	2018
Projected benefit obligation	\$ 58.9	\$ 56.4	\$ 7.1	\$ 7.4
Accumulated benefit obligation	57.0	54.8	7.1	7.4
Fair value of plan assets	4.6	4.6	—	—

Weighted-average assumptions used to determine benefit obligations at December 31:

	Pension Benefits		Health Care Benefits	
	2019	2018	2019	2018
Discount rate	3.19 %	4.11 %	3.18 %	3.98 %
Assumed health care cost trend rates at December 31:				
Health care cost trend rate assumed for next year	N/A	N/A	5.88 %	6.09 %
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	N/A	N/A	4.50 %	4.50 %
Year that the rate reaches the ultimate trend rate	N/A	N/A	2027	2027

The following table summarizes the components of net periodic benefit cost or gain that was recognized during each of the years in the three-year period ended December 31, 2019.

(in millions)	Pension Benefits			Health Care Benefits		
	2019	2018	2017	2019	2018	2017
Components of net periodic benefit costs (gains):						
Service Cost	\$ 0.5	\$ 0.6	\$ 0.6	\$ —	\$ —	\$ —
Interest Cost	18.2	17.6	19.3	0.2	0.3	0.4
Expected return on plan assets	(23.7)	(23.8)	(27.7)	—	—	—
Mark-to-market actuarial net losses (gains)	(9.7)	16.2	5.0	0.1	(0.6)	(1.7)
Other	—	(0.1)	—	—	—	—
Net periodic cost (benefit)	\$ (14.7)	\$ 10.5	\$ (2.8)	\$ 0.3	\$ (0.3)	\$ (1.3)

In 2019, we recognized a \$9.6 million mark-to-market gain that was primarily the result of actual asset returns that were higher than our assumed returns and mortality assumptions. Partially offsetting the higher asset returns was the decrease in our year end discount rate from 4.11% to 3.19%.

In 2018, we recognized a \$15.6 million mark-to-market charge that was primarily a result of actual asset returns that were lower than our assumed returns. Partially offsetting the lower asset returns was the increase in our year end discount rates from 3.62% to 4.11%.

In 2017, we recognized a \$3.3 million mark-to-market charge that was primarily a result of the decrease in our year end discount rates, from 3.97% to 3.62%, and updated mortality assumptions, partially offset by a higher than expected return on assets.

Weighted-average assumptions used to determine net periodic benefit cost for the years ended December 31:

	Pension Benefits			Health Care Benefits		
	2019	2018	2017	2019	2018	2017
Discount rate*	4.11 %	3.62 %	3.97 %	3.98 %	3.60 %	4.04 %
Expected long-term return on plan assets*	5.68 %	5.09 %	6.08 %	—	—	—
Assumed health care cost trend rates at December 31:						
Health care cost trend rate assumed for next year	N/A	N/A	N/A	6.09 %	6.29 %	6.52 %
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	N/A	N/A	N/A	4.50 %	4.50 %	4.50 %
Year that the rate reaches the ultimate trend rate	N/A	N/A	N/A	2027	2027	2027

\*The mark-to-market component of net periodic costs is determined based on discount rates as of year-end and actual asset returns during the year.

The expected long-term rate of return on pension assets was determined after considering the historical and forward looking long-term asset returns by asset category and the expected investment portfolio mix.

Our pension investment strategy is to diversify the portfolio among asset categories to enhance the portfolio's risk-adjusted return as well as insulate it from exposure to changes in interest rates. Our asset mix considers the duration of plan liabilities, historical and expected returns of the investments, and the funded status of the plan. The pension asset allocation is reviewed and actively managed based on the funded status of the plan. Based on the current funded status of the plan, our pension asset investment allocation guidelines are to invest 83% in fixed income securities and 17% in equity securities. The plan keeps a minimal amount of cash available to fund benefit payments. These investments may include funds of multiple asset investment strategies and funds of hedge funds.

The fair values of pension plan assets at December 31, 2019 and 2018, by asset category, are as follows:

(In millions)	Fair Value of Plan Assets at December 31, 2019			
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Investments (at Fair Value)
<b>Asset category</b>				
Cash	\$ 3.7	\$ —	\$ —	\$ 3.7
Other	—	—	4.6	4.6
Total	<u>\$ 3.7</u>	<u>\$ —</u>	<u>\$ 4.6</u>	<u>8.3</u>
Investments measured at NAV:				
Common collective funds:				
United States equity				31.7
International equity				31.9
Global equity				15.7
Fixed income				381.5
Total common collective funds				<u>460.8</u>
Total investments at fair value				<u>\$ 469.1</u>

(In millions)	Fair Value of Plan Assets at December 31, 2018			
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Investments (at Fair Value)
<b>Asset category</b>				
Cash	\$ 3.7	\$ —	\$ —	\$ 3.7
Other	—	—	4.6	4.6
Total	<u>\$ 3.7</u>	<u>\$ —</u>	<u>\$ 4.6</u>	<u>8.3</u>
Investments at NAV				
Common collective funds				
United States equity				14.9
International equity				14.9
Global equity				8.5
Fixed income				387.8
Total common collective funds				<u>\$ 426.1</u>
Total investments at fair value				<u>\$ 434.4</u>

#### Pension Plan Assets

Other assets are primarily insurance contracts for international plans. The U.S. equity common collective funds are predominately invested in equity securities actively traded in public markets. The international and global equity common collective funds have broadly diversified investments across economic sectors and focus on low volatility, long-term investments. The fixed income common collective funds consist primarily of publicly traded United States fixed interest obligations (principally investment grade bonds and government securities).

Level 1 assets are valued based on quoted market prices. Level 2 investments are valued based on quoted market prices and/or other market data for the same or comparable instruments and transactions of the underlying fixed income investments. The insurance contracts included in the other asset category are valued at the transacted price. Common collective funds are valued at the net asset value of units held by the fund at year end. The unit value is determined by the total value of fund assets divided by the total number of units of the fund owned.

The estimated future benefit payments for our pension and health care plans are as follows:

(In millions)	Pension Benefits	Health Care benefits
2020	\$ 38.0	\$ 0.8
2021	38.4	0.8
2022	36.3	0.7
2023	35.9	0.7
2024	34.6	0.6
2025 through 2029	156.2	2.4

We currently estimate that 2020 employer contributions will be \$4.2 million to all qualified and non-qualified pension plans and \$0.8 million to all healthcare benefit plans.

PolyOne sponsors various voluntary retirement savings plans (RSP). Under the provisions of the plans, eligible employees receive defined Company contributions and are eligible for Company matching contributions based on their eligible earnings contributed to the plan. In addition, we may make discretionary contributions to the plans for eligible employees based on a specific percentage of each employee's compensation.

Following are our contributions to the RSP:

(In millions)	2019	2018	2017
Retirement savings match	\$ 10.4	\$ 10.1	\$ 9.1
Retirement savings contribution	—	—	1.6
Total contribution	<u>\$ 10.4</u>	<u>\$ 10.1</u>	<u>\$ 10.7</u>



## Note 11 — COMMITMENTS AND CONTINGENCIES

**Environmental** — We have been notified by federal and state environmental agencies and by private parties that we may be a potentially responsible party (PRP) in connection with the environmental investigation and remediation of certain sites. While government agencies frequently assert that PRPs are jointly and severally liable at these sites, in our experience, the interim and final allocations of liability costs are generally made based on the relative contribution of waste. We may also initiate corrective and preventive environmental projects of our own to ensure safe and lawful activities at our operations. We believe that compliance with current governmental regulations at all levels will not have a material adverse effect on our financial position, results of operations or cash flows.

In September 2007, the United States District Court for the Western District of Kentucky in the case of *Westlake Vinyls, Inc. v. Goodrich Corporation, et al.*, held that PolyOne must pay the remediation costs at the former Goodrich Corporation Calvert City facility (now largely owned and operated by Westlake Vinyls), together with certain defense costs of Goodrich Corporation. The rulings also provided that PolyOne can seek indemnification for contamination attributable to Westlake Vinyls.

Following the rulings, the parties to the litigation agreed to settle all claims regarding past environmental costs incurred at the site. The settlement agreement provides a mechanism to pursue allocation of future remediation costs at the Calvert City site to Westlake Vinyls. We will adjust our accrual, in the future, consistent with any such future allocation of costs. Additionally, we continue to pursue available insurance coverage related to this matter and recognize gains as we receive reimbursement.

The environmental obligation at the site arose as a result of an agreement between The B.F. Goodrich Company (n/k/a Goodrich Corporation) and our predecessor, The Geon Company, at the time of the initial public offering in 1993. Under the agreement, The Geon Company agreed to indemnify Goodrich Corporation for certain environmental costs at the site. Neither PolyOne nor The Geon Company ever operated the facility.

Since 2009, PolyOne, along with respondents Westlake Vinyls and Goodrich Corporation, have worked with the United States Environmental Protection Agency (USEPA) on the investigation of contamination at the site as well as evaluation of potential remedies to address the contamination. The USEPA issued its Record of Decision (ROD) in September 2018, selecting a remedy consistent with our accrual assumptions. In April 2019, the respondents signed an Administrative Settlement Agreement and Order on Consent with the USEPA to conduct the remedial design. In October 2019, the USEPA sent a Special Notice Letter to PolyOne, Westlake Vinyls and Goodrich Corporation inviting negotiation of a Consent Decree to perform the remedial actions at the site. On December 23, 2019, the three companies submitted to the USEPA a Good Faith Offer Letter agreeing to negotiate a Consent Decree, along with a draft proposed Consent Decree and draft remedial action Work Plan. Our current reserve of \$100.8 million is consistent with the USEPA's estimates contained in the ROD.

On March 13, 2013, PolyOne acquired Spartech Corporation (Spartech). One of Spartech's subsidiaries, Franklin-Burlington Plastics, Inc. (Franklin-Burlington), operated a plastic resin compounding facility in Kearny, New Jersey, located adjacent to the Passaic River. The USEPA requested that companies located in the area of the lower Passaic River, including Franklin-Burlington, cooperate in an investigation of contamination of approximately 17 miles of the lower Passaic River Study Area (the LPRSA). In response, Franklin-Burlington and approximately 70 other companies (collectively, the Cooperating Parties) agreed, pursuant to an Administrative Order on Consent (AOC) with the USEPA, to assume responsibility for development of a Remedial Investigation and Feasibility Study of the LPRSA. Franklin-Burlington has not admitted to any liability or agreed to bear any other costs for remediation or natural resource damage.

In 2015, the Cooperating Parties submitted to the USEPA a remedial investigation report and feasibility study for the LPRSA, and are currently engaged in technical discussions with the USEPA to revise and finalize those documents. Neither of those documents contemplates who is responsible for remediation or how such costs might be allocated to PRPs. In March 2016, the USEPA issued a ROD selecting a remedy for an eight-mile portion of the LPRSA at an estimated and discounted cost of \$1.4 billion. On March 31, 2016, the USEPA sent a Notice of Potential Liability to over 100 companies, including Franklin-Burlington, and several municipalities for this eight-mile portion. In September 2016, the USEPA reached an agreement with Occidental Chemical Corporation (OCC), which orders OCC to perform the remedial design for the lower eight mile portion of the Passaic River. In September 2017, the USEPA sent a letter to over 80 companies, including Franklin-Burlington, indicating that the USEPA would engage the recipients in an allocation process for the lower eight miles of the LPRSA, and has engaged a third-party allocator as part of that process. Along with other parties, Franklin-Burlington is participating in the development of this allocation process with the allocator retained by the USEPA, and this process is expected to continue into at least 2020. On June 30, 2018, OCC, independent of the USEPA, filed suit against over 100 named entities,

including Franklin-Burlington, seeking contribution for past and future costs associated with the remediation of the lower eight-mile portion of the LPRSA.

Based on the currently available information, we have not identified evidence that Franklin-Burlington contributed any of the primary contaminants of concern to the lower Passaic River. A timeline as to when an allocation of the remedial costs may be determined is not yet known and any allocation to Franklin-Burlington has not been determined. As a result of these uncertainties, we are unable to estimate a liability related to this matter and, as of December 31, 2019, we have not accrued for costs of remediation related to the lower Passaic River.

The Consolidated Balance Sheets include accruals totaling \$112.0 million and \$111.9 million as of December 31, 2019 and 2018, respectively, based on our estimates of probable future environmental expenditures relating to previously contaminated sites. These undiscounted amounts are included in *Accrued expenses and other current liabilities* and *Other non-current liabilities* on the accompanying Consolidated Balance Sheets. The accruals represent our best estimate of probable future costs that we can reasonably estimate, based upon currently available information and technology and our view of the most likely remedy. Depending upon the results of future testing, completion and results of remedial investigation and feasibility studies, the ultimate remediation alternatives undertaken, changes in regulations, technology development, new information, newly discovered conditions and other factors, it is reasonably possible that we could incur additional costs in excess of the amount accrued at December 31, 2019. However, such additional costs, if any, cannot be currently estimated.

The following table details the changes in the environmental accrued liabilities:

(in millions)	2019	2018	2017
Balance at beginning of the year	\$ 111.9	\$ 114.8	\$ 114.9
Environmental expenses	10.2	23.1	14.9
Net cash payments	(10.3)	(26.0)	(15.1)
Currency translation and other	0.2	—	0.1
Balance at the end of year	\$ 112.0	\$ 111.9	\$ 114.8

The environmental expenses noted in the table above are included in *Cost of sales* in the accompanying Consolidated Statements of Income (Loss), as are insurance recoveries received for previously incurred environmental costs. We received insurance recoveries of \$4.5 million, \$4.3 million, and \$9.1 million in 2019, 2018 and 2017, respectively. Such insurance recoveries are recognized as a gain when received.

**Other Litigation** — We are involved in various pending or threatened claims, lawsuits and administrative proceedings, all arising from the ordinary course of business concerning commercial, product liability, employment and environmental matters that seek remedies or damages. We believe that the probability is remote that losses in excess of the amounts we have accrued would be materially adverse to our financial position, results of operations or cash flows.

## Note 12 — INCOME TAXES

Income from continuing operations, before income taxes is summarized below based on the geographic location of the operation to which such earnings are attributable.

Income from continuing operations, before income taxes consists of the following:

(In millions)	2019	2018	2017
Domestic	\$ 41.2	\$ 4.1	\$ 18.0
Foreign	68.2	97.7	93.9
Income from continuing operations, before income taxes	\$ 109.4	\$ 101.8	\$ 111.9

A summary of income tax expense from continuing operations is as follows:

(In millions)	2019	2018	2017
Current income tax expense (benefit):			
Domestic - GILTI, FDII, and U.S. tax reform transition tax	\$ 0.1	\$ 5.0	\$ 19.9
Domestic - other	24.7	(5.4)	(41.4)
Foreign	21.9	22.0	23.9
Total current income tax expense	\$ 46.7	\$ 21.6	\$ 2.4
Deferred income tax (benefit) expense:			
Domestic - U.S. tax reform, tax effect on net deferred tax liabilities	\$ —	\$ (6.8)	\$ (20.1)
Domestic - other	(12.5)	17.9	26.4
Foreign	(0.5)	(18.3)	(7.9)
Total deferred income tax (benefit) expense	\$ (13.0)	\$ (7.2)	\$ (1.6)
Total income tax expense	\$ 33.7	\$ 14.4	\$ 0.8

The Tax Cuts and Jobs Act (TCJA) was enacted on December 22, 2017. Among other things, effective in 2018, the TCJA reduced the US federal corporate tax rate from 35% to 21%, exempts from U.S. federal income taxation dividends from certain foreign corporations to their U.S. shareholders, eliminates or reduces the effect of various federal tax deductions and creates new taxes on certain outbound payments and future foreign earnings generated after 2017. The TCJA required U.S. companies to pay a one-time transition tax on earnings of foreign corporate subsidiaries that were at least ten-percent owned by such U.S. companies and that were previously deferred from U.S. taxation.

As of December 31, 2018, we completed our accounting for the tax effects of the enactment of the TCJA. In compliance with the one-year measurement period of the SEC's Staff Accounting Bulletin 118 (SAB 118) (issued December 22, 2017), we have finalized the effects of the TCJA on our existing deferred income tax balances, the one-time transition tax and, as discussed below, the impact the TCJA had on our indefinite reinvestment assertion pursuant to Accounting Principles Board 23 (APB 23). These finalized effects are included as components of income tax expense from continuing operations and are noted in the following tabular reconciliation.

As of December 31, 2018, we completed our analysis with respect to the impact of the TCJA on our continuing assertion that our foreign earnings are indefinitely reinvested pursuant to APB 23 of Accounting Standards Codification 740-30 (ASC 740-30). APB 23 provides guidance that US companies do not need to recognize tax effects on foreign earnings that are indefinitely reinvested. Our assertion has changed with respect to certain earnings of foreign affiliates in certain countries, which resulted in a recognition of tax liabilities. As of December 31, 2018, and noted in the following tabular reconciliation, Repatriation of certain foreign earnings from prior and current periods line totaled 9.4%. This consisted of an impact of 7.5% to our provision from a decision to repatriate prior year earnings after completing our analysis with respect to the TCJA and 1.9% pertaining to our decision to repatriate certain current year earnings. For the year ended December 31, 2019, the rate impact was 1.6% pertaining to our decision to repatriate certain current year earnings. The rest of our foreign earnings are indefinitely reinvested pursuant to APB 23 and our policy. No deferred income taxes were recorded on outside basis differences as it was not practicable to determine the provision impact, if any, due to the complexities associated with this calculation.

We elected to recognize the resulting tax on GILTI and FDII as a period expense in the period the tax is incurred.

A reconciliation of the applicable U.S. federal statutory tax rate to the consolidated effective income tax rate from continuing operations along with a description of significant or unusual reconciling items is included below.

	Twelve Months Ended December 31,		
	2019	2018	2017
Federal statutory income tax rate	21.0 %	21.0 %	35.0 %
Foreign tax rate differential:			
Asia	0.7	0.4	(2.2)
Europe	(10.3)	(11.6)	(16.2)
Canada and Mexico	0.7	(0.9)	(1.6)
Total foreign tax rate differential	(8.9)	(12.1)	(20.0)
Tax on GILTI	1.9	3.3	—
Repatriation on certain foreign earnings from prior and current periods	1.6	9.4	0.8
Net impact of non-deductible acquisition earnouts	2.8	0.2	—
Tax on one-time gain from sale of other assets	6.0	—	—
U.S. tax reform, transition tax	0.2	2.1	17.8
U.S. tax reform, tax effect on net deferred tax liabilities	—	(5.4)	(18.0)
Tax impact of FDII deduction	(2.0)	(0.4)	—
Research and development credit	(2.8)	(0.8)	(1.4)
Domestic production activities deduction	—	(1.1)	(2.4)
Amended prior period tax returns and corresponding favorable audit adjustments	(0.7)	—	(6.8)
Tax benefits on certain foreign investments	—	—	(12.8)
State and local tax, net	4.2	2.3	0.2
Foreign permanent items	7.5	(1.6)	2.4
Net impact of uncertain tax positions	(2.4)	(0.6)	4.8
Changes in valuation allowances	1.7	(3.4)	1.4
Other	0.7	1.2	(0.3)
Effective income tax rate	30.8 %	14.1 %	0.7 %

The effective tax rates for all periods differed from the applicable U.S. federal statutory tax rate as a result of permanent items, state and local income taxes, differences in foreign tax rates and certain unusual items. Permanent items primarily consist of income or expense not taxable or deductible. Significant or unusual items impacting the effective income tax rate are described below.

#### 2019 Significant items

The State and local tax, net line included the result from an unfavorable state tax audit decision combined with higher domestic earnings in 2019.

Foreign permanent items line included the tax effect of non-deductibility of interest expense related to the receipt of tax-exempt dividends, which caused an unfavorable tax effect of \$10.3 million (9.4%) partially offset by the tax impact of other net favorable permanent items of \$2.0 million (1.9%).

Net impact of uncertain tax positions line resulted from the expiration of statute of limitations and favorable tax settlements.

Changes in valuation allowances line in 2019 resulted from foreign operational losses.

#### 2018 Significant items

Repatriation of certain foreign earnings from prior and current periods line had an unfavorable tax impact of \$10.3 million (9.4%). This consisted of an impact of 7.5% to our provision from a decision to repatriate prior year earnings after completing our analysis with respect to the TCJA and 1.9% pertaining to our decision to repatriate certain current year earnings.

State and local tax, net line was unfavorably impacted by a state tax audit decision.

Foreign permanent items line included a favorable tax treatment of a foreign intellectual property transaction.

The benefit reflected in the Changes in valuation allowances line resulted from the realizability of a deferred tax asset for one of our foreign entities.

#### 2017 Significant items

The Foreign tax rate differential line item primarily related to a European legal entity realignment.

Tax benefits on certain foreign investments was a result of distributions from foreign subsidiaries with net foreign tax credits.

Components of our deferred tax assets (liabilities) as of December 31, 2019 and 2018 were as follows:

(In millions)	2019	2018
<b>Deferred tax assets:</b>		
Pension and other post-retirement benefits	\$ 2.7	\$ 7.6
Employment costs	20.5	20.1
Environmental reserves	27.9	28.2
Net operating loss carryforwards	45.3	48.8
Operating leases	18.0	—
Other, net	42.4	39.8
Gross deferred tax assets	\$ 156.8	\$ 144.5
Valuation allowances	(16.2)	(15.2)
Total deferred tax assets, net of valuation allowances	\$ 140.6	\$ 129.3
<b>Deferred tax liabilities:</b>		
Property, plant and equipment	\$ (25.9)	\$ (33.9)
Goodwill and intangibles	(95.1)	(101.5)
Operating leases	(18.0)	—
Other, net	(14.2)	(14.2)
Total deferred tax liabilities	\$ (153.2)	\$ (149.6)
Net deferred tax (liabilities) assets	\$ (12.6)	\$ (20.3)
<b>Consolidated Balance Sheets:</b>		
Non-current deferred income tax assets	\$ 50.9	\$ 48.8
Non-current deferred income tax liabilities	\$ (63.5)	\$ (69.1)

As of December 31, 2019, we had gross state net operating loss carryforwards of \$32.5 million that expire between 2020 and 2038. Various foreign subsidiaries have gross net operating loss carryforwards totaling \$155.6 million that expire between 2020 and 2036 or that have indefinite carryforward periods. Total tax valuation allowances increased \$1.0 million from the prior year primarily due to additional losses from certain foreign entities. We have provided valuation allowances of \$14.3 million against certain foreign and state net operating loss carryforwards that are expected to expire prior to utilization.

We decided to repatriate certain current year foreign earnings which we expect to receive in 2020 for which the provision impact was 1.6% in the current year and 9.4% in 2018, included in the tabular rate reconciliation above. The balance of the related accrual is included in the above Other, net deferred tax liabilities line (\$6.7 million and \$8.2 million, respectively) above. As of December 31, 2019, no provision has been made for income taxes on the undistributed earnings of certain non-U.S. subsidiaries of approximately \$395 million as these amounts continue to be indefinitely reinvested as consistent with our policy.

We made worldwide income tax payments of \$45.7 million and received refunds of \$20.0 million in 2019. We made worldwide income tax payments of \$40.5 million and \$51.1 million in 2018 and 2017, respectively, and received refunds of \$29.9 million and \$6.7 million in 2018 and 2017, respectively.

The Company records provisions for uncertain tax positions in accordance with ASC Topic 740, *Income Taxes*. A reconciliation of unrecognized tax benefits is as follows:

(In millions)	Unrecognized Tax Benefits		
	2019	2018	2017
Balance as of January 1,	\$ 16.4	\$ 17.8	\$ 7.1
Increases as a result of positions taken during current year	1.1	1.3	9.2
Increases as a result of positions taken for prior years	0.4	1.1	1.8
Reductions for tax positions of prior years	(0.7)	(2.6)	(0.3)
Decreases as a result of lapse of statute of limitations	(5.0)	(0.2)	—
Decreases relating to settlements with taxing authorities	—	(0.5)	—
Other, net	(1.0)	(0.5)	—
Balance as of December 31,	<u>\$ 11.2</u>	<u>\$ 16.4</u>	<u>\$ 17.8</u>

We recognize interest and penalties related to uncertain tax positions in the provision for income taxes. As of December 31, 2019 and 2018, we had \$1.4 million and \$2.5 million accrued for interest and penalties, respectively.

Although the timing and outcome of tax settlements are uncertain, it is reasonably possible that during the next twelve months a reduction in unrecognized tax benefits may occur up to \$0.2 million based on the outcome of tax examinations and the expiration of statutes of limitations.

If all unrecognized tax benefits were recognized, the net impact on the provision for income tax expense would be a benefit of \$4.9 million.

The Company is currently being audited by federal, state and foreign taxing jurisdictions. We are no longer subject to U.S. federal income tax examinations for periods preceding 2016. With limited exceptions, we are no longer subject to state tax and foreign tax examinations for periods preceding 2015.

For the income tax impact associated with PP&S and DSS, refer to Note 3, *Discontinued Operations*.

### Note 13 — SHARE-BASED COMPENSATION

Share-based compensation cost is based on the value of the portion of share-based payment awards that are ultimately expected to vest during the period. Share-based compensation cost recognized in the accompanying Consolidated Statements of Income (Loss) includes compensation cost for share-based payment awards based on the grant date fair value estimated in accordance with the provision of FASB ASC Topic 718, *Compensation — Stock Compensation*. Share-based compensation expense is based on awards expected to vest and therefore has been reduced for estimated forfeitures.

#### Equity and Performance Incentive Plans

The PolyOne Corporation 2017 Equity and Incentive Compensation Plan reserved 2.5 million common shares for the award of a variety of share-based compensation alternatives, including non-qualified stock options, incentive stock options, restricted stock, restricted stock units (RSUs), performance shares, performance units and stock appreciation rights (SARs). It is anticipated that all share-based grants and awards that are earned and exercised will be issued from PolyOne common shares that are held in treasury.

Share-based compensation is included in *Selling and administrative expense* in the accompanying Consolidated Statements of Income (Loss). A summary of compensation expense by type of award follows:

(In millions)	2019	2018	2017
Stock appreciation rights	\$ 4.8	\$ 4.2	\$ 4.0
Performance shares	0.3	0.4	0.5
Restricted stock units	6.4	5.6	5.1
Total share-based compensation	<u>\$ 11.5</u>	<u>\$ 10.2</u>	<u>\$ 9.6</u>

#### Stock Appreciation Rights

During the years ended December 31, 2019, 2018 and 2017, the total number of SARs granted was 0.6 million, 0.3 million and 0.5 million, respectively. Awards vest in one-third increments upon the later of the attainment of time-based vesting over a three-year service period and stock price targets. Awards granted in 2019, 2018 and 2017 are subject to an appreciation cap of 200% of the base price. SARs have contractual terms of ten years from the date of the grant.

The SARs were valued using a Monte Carlo simulation method as the vesting is dependent on the achievement of certain stock price targets. The SARs have time and market-based vesting conditions but vest no earlier than their three year graded vesting schedule. The expected term is an output from the Monte Carlo model and is derived from employee exercise assumptions that are based on PolyOne historical exercise experience. The expected volatility was determined based on the average weekly volatility for our common shares for the contractual life of the awards. The expected dividend assumption was determined based upon PolyOne's dividend yield at the time of grant. The risk-free rate of return was based on available yields on U.S. Treasury bills of the same duration as the contractual life of the awards. Forfeitures were estimated at 3% per year based on our historical experience.

The following is a summary of the weighted average assumptions related to the grants issued during 2019, 2018 and 2017:

	2019	2018	2017
Expected volatility	40.0%	41.0%	41.0%
Expected dividends	2.47%	1.67%	1.58%
Expected term (in years)	6.6	6.5	6.5
Risk-free rate	2.78%	3.06%	2.72%
Value of SARs granted	\$10.13	\$14.82	\$12.01

A summary of SAR activity for 2019 is presented below:

Stock Appreciation Rights					
(In millions, except per share data)		Shares	Weighted-Average Exercise Price per Share	Weighted- Average Remaining Contractual Term	Aggregate Intrinsic value
Outstanding as of January 1, 2019		1.8	\$ 32.14	6.8	\$ 4.0
Granted		0.6	31.54		
Exercised		(0.1)	22.47		
Forfeited or expired		(0.1)	35.46		
Outstanding as of December 31, 2019		2.2	\$ 32.04	6.6	\$ 12.3
Vested and exercisable as of December 31, 2019		1.2	\$ 29.13	5.1	\$ 9.3

The total intrinsic value of SARs exercised during 2019, 2018 and 2017 was \$0.4 million, \$6.5 million and \$7.6 million, respectively. As of December 31, 2019, there was \$2.7 million of total unrecognized compensation cost related to SARs, which is expected to be recognized over the weighted average remaining vesting period of 34 months.

### Restricted Stock Units

RSUs represent contingent rights to receive one common share at a future date provided certain vesting criteria are met.

During 2019, 2018 and 2017, the total number of RSUs granted was 0.2 million, 0.2 million and 0.3 million, respectively. These RSUs, which vest on the third anniversary of the grant date, were granted to executives and other key employees. Compensation expense is measured on the grant date using the quoted market price of our common shares and is recognized on a straight-line basis over the requisite service period.

As of December 31, 2019, 0.6 million RSUs remain unvested with a weighted-average grant date fair value of \$35.56. Unrecognized compensation cost for RSUs at December 31, 2019 was \$6.2 million, which is expected to be recognized over the weighted average remaining vesting period of 21 months.

### Note 14 — SEGMENT INFORMATION

Operating income is the primary measure that is reported to our chief operating decision maker (CODM) for purposes of allocating resources to the segments and assessing their performance. Operating income at the segment level does not include: corporate general and administrative expenses that are not allocated to segments; intersegment sales and profit eliminations; charges related to specific strategic initiatives such as the consolidation of operations; restructuring activities, including employee separation costs resulting from personnel reduction programs, plant closure and phase-in costs; executive separation agreements; share-based compensation costs; asset impairments; environmental remediation costs, along with related gains from insurance recoveries, and other liabilities for facilities no longer owned or closed in prior years; gains and losses on the divestiture of joint ventures and equity investments; actuarial gains and losses associated with our pension and other post-retirement benefit plans; and certain other items that are not included in the measure of segment profit or loss that is reported to and reviewed by our CODM. These costs are included in *Corporate and eliminations*.

Segment assets are primarily customer receivables, inventories, net property, plant and equipment, intangible assets and goodwill. Intersegment sales are generally accounted for at prices that approximate those for similar transactions with unaffiliated customers. *Corporate and eliminations* assets and liabilities primarily include cash, debt, pension and other employee benefits, environmental liabilities, retained assets and liabilities of discontinued operations, and other unallocated corporate assets and liabilities. The accounting policies of each segment are consistent with those described in Note 1, *Description of Business and Summary of Significant Accounting Policies*.

PolyOne has three reportable segments. Previously, PolyOne had five reportable segments. However, as a result of the divestitures of DSS and PP&S, we have removed both as separate operating segments and their results are presented as discontinued operations. Historical information has been retrospectively adjusted to reflect these changes.

The following is a description of each of our three reportable segments.

### **Color, Additives and Inks**

Color, Additives and Inks is a leading provider of specialized custom color and additive concentrates in solid and liquid form for thermoplastics, dispersions for thermosets, as well as specialty inks, plastisols, and vinyl slush molding solutions. Color and additive solutions include an innovative array of colors, special effects and performance-enhancing and sustainable solutions. When combined with polymer resins, our solutions help customers achieve differentiated specialized colors and effects targeted at the demands of today's highly design-oriented consumer and industrial end markets. Our additive concentrates encompass a wide variety of performance and process enhancing characteristics and are commonly categorized by the function that they perform, including UV light stabilization and blocking, antimicrobial, anti-static, blowing or foaming, antioxidant, lubricant, oxygen and visible light blocking and productivity enhancement. Of growing importance is our portfolio of additives that enable our customers to achieve their sustainability goals, including improved recyclability, reduced energy use, light weighting, and renewable energy applications. Our colorant and additives concentrates are used in a broad range of polymers, including those used in medical and pharmaceutical devices, food packaging, personal care and cosmetics, transportation, building products, wire and cable markets. We also provide custom-formulated liquid systems that meet a variety of customer needs and chemistries, including polyester, vinyl, natural rubber and latex, polyurethane and silicone. Our offerings also include proprietary inks and latexes for diversified markets such as recreational and athletic apparel, construction and filtration, outdoor furniture and healthcare. Our liquid polymer coatings and additives are largely based on vinyl and are used in a variety of markets, including building and construction, consumer, healthcare, industrial, packaging, textiles, appliances, transportation, and wire and cable. Color, Additives and Inks has manufacturing, sales and service facilities located throughout North America, South America, Europe and Asia.

### **Specialty Engineered Materials**

Specialty Engineered Materials is a leading provider of specialty and sustainable polymer formulations, services and solutions for designers, assemblers and processors of thermoplastic materials across a wide variety of markets and end-use applications. Our product portfolio, which we believe to be one of the most diverse in our industry, includes specialty formulated high-performance polymer materials that are manufactured using thermoplastic resins and elastomers, which are then combined with advanced polymer additives, reinforcement, filler, colorant and/or biomaterial technologies. We also have what we believe is the broadest composite platform of solutions, which include a full range of products from long glass and carbon fiber technology to thermoset and thermoplastic composites. These solutions meet a wide variety of unique customer requirements for sustainability, in particular light weighting. Our technical and market expertise enables us to expand the performance range and structural properties of traditional engineering-grade thermoplastic resins to meet evolving customer needs. Specialty Engineered Materials has manufacturing, sales and service facilities located throughout North America, Europe, and Asia. Our product development and application reach is further enhanced by the capabilities of our Innovation Centers in the United States, Germany and China, which produce and evaluate prototype and sample parts to help assess end-use performance and guide product development. Our manufacturing capabilities are targeted at meeting our customers' demand for speed, flexibility and critical quality.

### **Distribution**

The Distribution business distributes more than 4,000 grades of engineering and commodity grade resins, including PolyOne-produced solutions, principally to the North American, Central American and Asian markets. These products are sold to over 6,500 custom injection molders and extruders who, in turn, convert them into plastic parts that are sold to end-users in a wide range of industries. Representing over 25 major suppliers, we offer our customers a broad product portfolio, just-in-time delivery from multiple stocking locations and local technical



support. Expansion in Central America and Asia have bolstered Distribution's ability to serve the specialized needs of customers globally.

Financial information by reportable segment is as follows:

Year Ended December 31, 2019 (In millions)	Sales to External Customers	Intersegment Sales	Total Sales	Operating Income	Depreciation and Amortization	Capital Expenditures
Color, Additives and Inks	\$ 998.2	\$ 5.6	\$ 1,003.8	\$ 147.4	\$ 43.2	\$ 21.5
Specialty Engineered Materials	689.6	56.1	745.7	86.8	29.8	23.3
Distribution	1,172.9	19.3	1,192.2	75.4	0.5	1.6
Corporate and eliminations	2.0	(81.0)	(79.0)	(152.8)	4.6	21.2
Total	<u>\$ 2,862.7</u>	<u>\$ —</u>	<u>\$ 2,862.7</u>	<u>\$ 156.8</u>	<u>\$ 78.1</u>	<u>\$ 67.6</u>

Year Ended December 31, 2018 (In millions)	Sales to External Customers	Intersegment Sales	Total Sales	Operating Income	Depreciation and Amortization	Capital Expenditures
Color, Additives and Inks	\$ 1,040.6	\$ 5.9	\$ 1,046.5	\$ 158.5	\$ 44.3	\$ 22.9
Specialty Engineered Materials	593.6	52.2	645.8	72.3	23.2	25.2
Distribution	1,246.8	18.6	1,265.4	71.5	0.7	0.1
Corporate and eliminations	—	(76.7)	(76.7)	(123.7)	4.4	8.3
Total	<u>\$ 2,881.0</u>	<u>\$ —</u>	<u>\$ 2,881.0</u>	<u>\$ 178.6</u>	<u>\$ 72.6</u>	<u>\$ 56.5</u>

Year Ended December 31, 2017 (In millions)	Sales to External Customers	Intersegment Sales	Total Sales	Operating Income	Depreciation and Amortization	Capital Expenditures
Color, Additives and Inks	\$ 877.7	\$ 15.5	\$ 893.2	\$ 138.6	\$ 41.2	\$ 21.2
Specialty Engineered Materials	574.8	49.5	624.3	75.5	21.1	23.4
Distribution	1,137.8	16.8	1,154.6	72.6	0.8	0.5
Corporate and eliminations	—	(81.8)	(81.8)	(113.6)	4.2	9.3
Total	<u>\$ 2,590.3</u>	<u>\$ —</u>	<u>\$ 2,590.3</u>	<u>\$ 173.1</u>	<u>\$ 67.3</u>	<u>\$ 54.4</u>

Our sales are primarily to customers in the United States, Canada, Mexico, Europe, South America and Asia, and the majority of our assets are located in these same geographic areas. The following is a summary of sales and long-lived assets based on the geographic areas where the sales originated and where the assets are located:

(In millions)	2019	2018	2017
<b>Sales:</b>			
United States	\$ 1,560.4	\$ 1,543.1	\$ 1,439.2
Europe	556.2	547.4	455.7
Canada	140.6	142.2	133.8
Asia	316.5	331.8	296.3
Mexico	261.2	296.5	246.2
South America	27.8	20.0	19.1
Total Sales	<u>\$ 2,862.7</u>	<u>\$ 2,881.0</u>	<u>\$ 2,590.3</u>
<b>(In millions)</b>	<b>2019</b>	<b>2018</b>	
<b>Total Assets:</b>			
Color, Additives and Inks	\$ 1,215.8	\$ 1,243.5	
Specialty Engineered Materials	774.0	599.0	
Distribution	235.6	249.0	
Corporate and eliminations	1,047.9	377.6	
Assets held for sale	—	254.2	
Total	<u>\$ 3,273.3</u>	<u>\$ 2,723.3</u>	
<b>(In millions)</b>	<b>2019</b>	<b>2018</b>	
<b>Long lived assets:</b>			
United States	\$ 220.0	\$ 205.4	
Europe	98.1	113.5	
Canada	0.1	0.2	
Asia	77.3	57.5	
Mexico	5.5	6.2	
South America	6.4	1.7	
Total Long lived assets	<u>\$ 407.4</u>	<u>\$ 384.5</u>	

## Note 15 — DERIVATIVES AND HEDGING

We are exposed to market risks, such as changes in foreign currency exchange rates and interest rates. To manage the volatility related to these exposures we may enter into various derivative transactions. As of December 31, 2019, we had derivatives designated as net investment hedging and cash flow hedging instruments.

### Net Investment Hedge

During October and December 2018, as a means of mitigating the impact of currency fluctuations on our Euro investments in foreign entities, we executed a total of six cross currency swaps, in which we will pay fixed-rate interest in Euros and receive fixed-rate interest in U.S. dollars with a combined notional amount of 250.0 million Euros and which mature in March 2023. This effectively converts a portion of our U.S. Dollar denominated fixed-rate debt to Euro denominated fixed-rate debt. That conversion resulted in net benefits of \$8.3 million and \$2.0 million for the years ended December 31, 2019 and 2018, respectively, which was recognized within *Interest expense, net* within the Condensed Consolidated Statements of Income.

We designated the swaps as net investment hedges of our net investment in our European operations under ASU 2017-12 and applied the spot method to these hedges. For the years ended December 31, 2019 and 2018, gains of \$9.1 million and \$2.0 million, respectively, were recognized within translation adjustments in AOCI, net of tax.

### Cash Flow Hedging Instruments

In August 2018, we entered into two interest rate swaps with a combined notional amount of \$150.0 million to manage the variability of cash flows in the interest rate payments associated with our existing LIBOR-based interest payments, effectively converting \$150.0 million of our floating rate debt to a fixed rate. We began to receive floating rate interest payments based upon one month U.S. dollar LIBOR and in return are obligated to pay interest at a

fixed rate of 2.732% until November 2022. We have designated these swap contracts as cash flow hedges pursuant to ASC 815, *Derivatives and Hedging*. The amount of expense recognized within *Interest expense, net* in our Consolidated Statements of Income (Loss) was \$0.7 million and \$0.3 million for the years ending December 31, 2019 and 2018, respectively. The amount of loss recognized in AOCI, net of tax was \$2.5 million and \$1.3 million for the years ended December 31, 2019 and 2018, respectively.

All of our derivative assets and liabilities measured at fair value are classified as Level 2 within the fair value hierarchy. We determine the fair value of our derivatives based on valuation methods, which project future cash flows and discount the future amounts present value using market based observable inputs, including interest rate curves and foreign currency rates. The fair value of derivative financial instruments recognized in the Condensed Consolidated Balance Sheets is as follows:

(In millions)	Balance Sheet Location	December 31, 2019		December 31, 2018	
<b>Assets</b>					
Cross Currency Swaps (Net Investment Hedge)	Other non-current assets	\$	14.7	\$	2.6
<b>Liabilities</b>					
Interest Rate Swap (Fair Value Hedge)	Other non-current liabilities	\$	5.1	\$	1.7

## Note 16 — SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

(In millions, except per share data)	2019 Quarters				2018 Quarters			
	Fourth <sup>(2)</sup>	Third <sup>(3)</sup>	Second <sup>(4)</sup>	First <sup>(5)</sup>	Fourth <sup>(6)</sup>	Third <sup>(7)</sup>	Second <sup>(8)</sup>	First <sup>(9)</sup>
Sales	\$ 658.6	\$ 705.3	\$ 748.2	\$ 750.6	\$ 677.1	\$ 729.0	\$ 743.9	\$ 731.0
Gross Margin	153.3	160.5	175.3	168.1	140.9	157.2	162.9	163.8
Operating Income	20.5	43.1	46.1	47.1	30.2	48.7	49.6	50.1
Net income (loss) from continuing operations	6.4	23.6	23.2	22.5	(1.5)	32.5	29.4	27.0
Net income from continuing operations attributable to PolyOne Shareholders	6.4	23.5	23.2	22.4	(1.3)	32.5	29.5	27.0
Income (loss) from discontinued operations, net of income taxes	458.9	19.5	18.9	15.8	12.7	17.7	21.8	19.9
Net income (loss) attributable to PolyOne common shareholders	\$ 465.3	\$ 43.0	\$ 42.1	\$ 38.2	\$ 11.4	\$ 50.2	\$ 51.3	\$ 46.9
Earnings (loss) per share from continuing operations attributable to PolyOne shareholders: <sup>(1)</sup>								
Basic earnings per share	\$ 0.08	\$ 0.31	\$ 0.30	\$ 0.29	\$ (0.02)	\$ 0.41	\$ 0.37	\$ 0.34
Diluted earnings per share	\$ 0.08	\$ 0.30	\$ 0.30	\$ 0.29	\$ (0.02)	\$ 0.40	\$ 0.37	\$ 0.33
Earnings (loss) per share from discontinued operations: <sup>(1)</sup>								
Basic earnings per share	\$ 5.97	\$ 0.25	\$ 0.24	\$ 0.20	\$ 0.16	\$ 0.22	\$ 0.27	\$ 0.25
Diluted earnings per share	\$ 5.92	\$ 0.25	\$ 0.24	\$ 0.20	\$ 0.16	\$ 0.22	\$ 0.27	\$ 0.24
Total earnings (loss) per share attributable to PolyOne shareholders: <sup>(1)</sup>								
Basic earnings per share	\$ 6.05	\$ 0.56	\$ 0.54	\$ 0.49	\$ 0.15	\$ 0.63	\$ 0.64	\$ 0.58
Diluted earnings per share	\$ 6.00	\$ 0.56	\$ 0.54	\$ 0.49	\$ 0.14	\$ 0.62	\$ 0.63	\$ 0.58

(1) Per share amounts for each quarter and the full year have been computed separately. The sum of the quarterly amounts may not equal the annual amounts presented because of the differences in average shares outstanding during each period.

(2) Included for the fourth quarter 2019 are: 1) acquisition charges and earnout adjustments of \$20.9 million, 2) mark-to-market pension and other post-retirement gains of \$9.6 million, 3) restructuring activities of \$4.1 million, 4) legal costs of \$1.9 million, and 5) an after-tax gain on the sale of discontinued operations of \$457.7 million.

(3) Included for the third quarter 2019 are: 1) acquisition charges and earnout adjustments of \$11.1 million, 2) environmental remediation expenses of \$6.4 million, and 3) legal costs of \$1.6 million.

(4) Included for the second quarter 2019 are: 1) acquisition related charges of \$10.7 million, 2) legal expenses of \$3.7 million, 3) restructuring charges of \$2.3 million, and 4) environmental remediation expenses of \$1.9 million.

(5) Included for the first quarter 2019 are: 1) restructuring expenses of \$3.9 million, 2) legal expenses of \$2.4 million, 3) acquisition related charges of \$2.2 million, and 4) environmental remediation expenses of \$2.1 million.

(6) Included for the fourth quarter 2018 are: 1) mark-to-market pension and other post-retirement charge of \$15.6 million, 2) environmental remediation costs of \$3.9 million and 3) acquisition related costs and adjustments of \$1.5 million.

(7) Included for the third quarter 2018 are: 1) environmental remediation costs of \$7.4 million and 2) a gain related to the reimbursement of previously incurred environmental costs of \$1.5 million.

(8) Included for the second quarter 2018 are: 1) environmental remediation costs of \$8.7 million, 2) acquisition related costs and adjustments of \$1.9 million and 3) a gain related to the reimbursement of previously incurred environmental costs of \$1.6 million.

(9) Included for the first quarter 2018 are: 1) environmental remediation costs of \$3.1 million and 2) acquisition related costs and adjustments of \$1.9 million.

#### **Note 17 — SUBSEQUENT EVENTS**

In February 2020, we received net proceeds of approximately \$496.8 million, after deducting the underwriters' discount but before deducting expenses, from the issuance of common shares in an underwritten public offering (the Equity Offering). For additional disclosure and detail, see Note 2, *Business Combinations*.

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

### **ITEM 9A. CONTROLS AND PROCEDURES**

#### **Disclosure controls and procedures**

PolyOne's management, with the participation of the Chief Executive Officer and the Chief Financial Officer, has evaluated the effectiveness of the design and operation of PolyOne's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of December 31, 2019. Based on this evaluation, the Chief Executive Officer and the Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 31, 2019.

#### **Management's Annual Report On Internal Control Over Financial Reporting**

The following report is provided by management in respect of PolyOne's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934):

1. PolyOne's management is responsible for establishing and maintaining adequate internal control over financial reporting.
2. Under the supervision of and with participation of PolyOne's management, including the Chief Executive Officer and the Chief Financial Officer, we conducted an evaluation of the effectiveness of internal control over financial reporting as of December 31, 2019 based on the guidelines established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (2013 Framework). Management believes that the 2013 Framework is a suitable framework for its evaluation of financial reporting because it is free from bias, permits reasonably consistent qualitative and quantitative measurements of PolyOne's internal control over financial reporting, is sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of PolyOne's internal control over financial reporting are not omitted and is relevant to an evaluation of internal control over financial reporting.
3. Based on the results of our evaluation, management has concluded that such internal control over financial reporting was effective as of December 31, 2019. There were no material weaknesses in internal control over financial reporting identified by management. The results of management's assessment were reviewed with our Audit Committee.
4. Ernst & Young LLP, who audited the consolidated financial statements of PolyOne for the year ended December 31, 2019, also issued an attestation report on PolyOne's internal control over financial reporting under Auditing Standard No. 2201 of the Public Company Accounting Oversight Board. This attestation report is set forth on page 32 of this Annual Report on Form 10-K and is incorporated by reference into this Item 9A.

#### **Changes in internal control over financial reporting**

There were no changes in the Company's internal control over financial reporting that occurred during the quarter ended December 31, 2019 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

#### **Limitations in internal control over financial reporting**

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

### **ITEM 9B. OTHER INFORMATION**

None.

### PART III

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information regarding PolyOne's directors, including the identification of the audit committee and audit committee financial experts, is incorporated by reference to the information contained in PolyOne's Proxy Statement with respect to the 2020 Annual Meeting of Shareholders (2020 Proxy Statement). Information concerning executive officers is contained in Part I of this Annual Report on Form 10-K under the heading "Information About Our Executive Officers."

The information regarding Section 16(a) beneficial ownership reporting compliance is incorporated by reference to the material under the heading "Delinquent Section 16(a) Reports" in the 2020 Proxy Statement.

The information regarding any changes in procedures by which shareholders may recommend nominees to PolyOne's Board of Directors is incorporated by reference to the information contained in the 2020 Proxy Statement.

PolyOne has adopted a code of ethics that applies to its principal executive officer, principal financial officer and principal accounting officer. PolyOne's code of ethics is posted under the Investor Relations tab of its website at [www.polyone.com](http://www.polyone.com). PolyOne will post any amendments to, or waivers of, its code of ethics that apply to its principal executive officer, principal financial officer and principal accounting officer on its website.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information regarding executive officer and director compensation is incorporated by reference to the information contained in the 2020 Proxy Statement.

The information regarding compensation committee interlocks and insider participation and the compensation committee report is incorporated by reference to the information contained in the 2020 Proxy Statement.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTERS**

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights <sup>(1)</sup>	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders	2,187,767	\$32.04	1,368,932
Equity compensation plans not approved by security holders	—	—	—
Total	2,187,767	\$32.04	1,368,932

<sup>(1)</sup> In addition to options, warrants and rights, the PolyOne Corporation 2017 Equity and Incentive Compensation Plan (the 2017 EICP) authorizes the issuance of restricted stock, restricted stock units, performance shares and awards to Non-Employee Directors. The 2017 EICP limits the total number of shares that may be issued as one or more of these types of awards to 2.5 million.

The information regarding security ownership of certain beneficial owners is incorporated by reference to the information contained in the 2020 Proxy Statement.

#### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information regarding certain relationships and related transactions and director independence is incorporated by reference to the information contained in the 2020 Proxy Statement.

#### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Information regarding fees paid to and services provided by PolyOne's independent registered public accounting firm and the pre-approval policies and procedures of the audit committee is incorporated by reference to the information contained in the 2020 Proxy Statement.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

#### (a)(1) Financial Statements:

The following consolidated financial statements of PolyOne Corporation are included in Item 8:

Consolidated Statements of Income (Loss) for the years ended December 31, 2019, 2018 and 2017

Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2019, 2018 and 2017

Consolidated Balance Sheets at December 31, 2019 and 2018

Consolidated Statements of Cash Flows for the years ended December 31, 2019, 2018 and 2017

Consolidated Statements of Shareholders' Equity for the years ended December 31, 2019, 2018 and 2017

Notes to Consolidated Financial Statements

All other schedules for which provision is made in Regulation S-X of the SEC are not required under the related instructions or are inapplicable and, therefore, have been omitted.

#### (a)(3) Exhibits:

Exhibit No.	Exhibit Description
<a href="#">2.1†</a>	<a href="#">Equity Purchase Agreement dated June 29, 2017, by and among PolyOne Corporation, PolyOne Designed Structures and Solutions LLC and NLIN Plastics, LLC (incorporated by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, SEC File No. 1-16091)</a>
<a href="#">2.2†</a>	<a href="#">Asset Purchase Agreement, dated August 16, 2019, by and among PolyOne Corporation and SK Echo Group S.à r.l. (incorporated by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019, SEC File no. 1-16091)</a>
<a href="#">2.3†**</a>	<a href="#">Share Purchase Agreement, dated December 19, 2019, by and between PolyOne Corporation and Clariant AG</a>
<a href="#">3.1</a>	<a href="#">Articles of Incorporation (incorporated by reference to Exhibit 3(i) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, SEC File No. 1-16091)</a>
<a href="#">3.2</a>	<a href="#">Amendment to the Second Article of the Articles of Incorporation, as filed with the Ohio Secretary of State, November 25, 2003 (incorporated by reference to Exhibit 3.1a to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, SEC File No. 1-16091)</a>
<a href="#">3.3</a>	<a href="#">Regulations (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 17, 2009, SEC File No. 1-16091)</a>
<a href="#">4.1</a>	<a href="#">Indenture, dated February 28, 2013, between PolyOne Corporation and Wells Fargo Bank, National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on March 5, 2013, SEC File No. 1-16091)</a>
<a href="#">4.2**</a>	<a href="#">Description of Securities</a>
<a href="#">10.1</a>	<a href="#">Third Amended and Restated Credit Agreement, dated June 28, 2019, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Wells Fargo Capital Finance, LLC, as administrative agent, and the various lenders and other agents party thereto (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019, SEC File No. 1-16091)</a>
<a href="#">10.2</a>	<a href="#">Credit Agreement, dated November 12, 2015, by and among PolyOne Corporation, as borrower, Citibank, N.A., as administrative agent, each of Citigroup Global Markets Inc., Wells Fargo Securities LLC, Goldman, Sachs &amp; Co., HSBC Securities (USA) Inc. and Morgan Stanley &amp; Co. LLC, as joint-lead arrangers and joint-book managers, Jefferies Finance LLC, KeyBank Capital Markets Inc. and SunTrust Robinson Humphrey, Inc., as co-managers, and several other commercial lending institutions that are parties thereto (incorporated by reference to Exhibit 10.6 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2015, SEC File No. 1-16091)</a>
<a href="#">10.3</a>	<a href="#">Amendment Agreement No. 1 to the Credit Agreement, dated as of June 15, 2016, among the Company, certain subsidiaries of the Company, Citibank, N.A., as administrative agent, and the additional lender party thereto (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016, SEC File No. 16091)</a>
<a href="#">10.4</a>	<a href="#">Amendment Agreement No. 2, dated August 3, 2016, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Citibank, N.A. as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on August 5, 2016, SEC File No. 1-16091)</a>
<a href="#">10.5</a>	<a href="#">Amendment Agreement No. 3, dated January 24, 2017, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Citibank, N.A., as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, SEC File No. 1-16091)</a>
<a href="#">10.6</a>	<a href="#">Amendment Agreement No. 4, dated August 15, 2017, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Citibank, N.A., as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2017, SEC File No. 1-16091)</a>

<a href="#"><u>10.7</u></a>	<a href="#"><u>Amendment Agreement No. 5, dated April 11, 2018, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Citibank, N.A., as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.8</u></a>	<a href="#"><u>Amendment Agreement No. 6, dated November 9, 2018, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Citibank, N.A., as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 13, 2018, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.9+</u></a>	<a href="#"><u>Form of 2011 Award Agreement under the 2010 Equity and Performance Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.10+</u></a>	<a href="#"><u>Amended and Restated PolyOne Corporation 2010 Equity and Performance Incentive Plan (incorporated by reference to Appendix B to the Company's definitive proxy statement on Schedule 14A filed on April 3, 2015, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.11+</u></a>	<a href="#"><u>First Amendment to the PolyOne Supplemental Retirement Benefit Plan (As Amended and Restated Effective January 1, 2014), dated as of March 16, 2016; Amendment No. 2 to the PolyOne Supplemental Retirement Benefit Plan (As Amended and Restated Effective January 1, 2014), dated as of December 19, 2018; and Amendment No. 3 to the PolyOne Supplemental Retirement Benefit Plan (As Amended and Restated Effective January 1, 2014), dated as of April 18, 2019 (incorporated by reference to Exhibit 4.5 to the Company's Registration Statement on Form S-8, filed on May 6, 2019, SEC File No. 333-231236)</u></a>
<a href="#"><u>10.12+</u></a>	<a href="#"><u>PolyOne 2017 Equity and Incentive Compensation Plan (incorporated by reference to Appendix B to the Company's definitive proxy statement on Schedule 14A filed on March 31, 2017, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.13+</u></a>	<a href="#"><u>Form of Grant of Stock-Settled Stock Appreciation Rights under the 2010 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.14+</u></a>	<a href="#"><u>Amended and Restated Deferred Compensation Plan for Non-Employee Directors (as amended and restated effective May 20, 2014) (incorporated by reference to Exhibit 10.7 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.15+</u></a>	<a href="#"><u>Form of Management Continuity Agreement for Executive Officers prior to 2011 (incorporated by reference to Exhibit 10.13 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.16+</u></a>	<a href="#"><u>Form of Management Continuity Agreement for Executive Officers after 2011 (incorporated by reference to Exhibit 10.12 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.17+*</u></a>	<a href="#"><u>Schedule of Executive Officers with Management Continuity Agreements</u></a>
<a href="#"><u>10.18+</u></a>	<a href="#"><u>PolyOne Supplemental Retirement Benefit Plan (As Amended and Restated Effective January 1, 2014) (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, SEC file No. 1-16091)</u></a>
<a href="#"><u>10.19</u></a>	<a href="#"><u>Assumption of Liabilities and Indemnification Agreement, dated March 1, 1993, amended and restated by Amended and Restated Assumption of Liabilities and Indemnification Agreement, dated April 27, 1993 (incorporated by reference to Exhibit 10.14 to The Geon Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, SEC File No. 1-11804)</u></a>
<a href="#"><u>10.20+</u></a>	<a href="#"><u>Executive Severance Plan, as amended and restated effective May 15, 2014 (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.21+</u></a>	<a href="#"><u>Form of 2012 Award Agreement under the PolyOne Corporation 2010 Equity and Performance Incentive Plan, as amended (incorporated by reference to Exhibit 10.38 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.22+</u></a>	<a href="#"><u>Form of 2013 Award Agreement under the PolyOne Corporation 2010 Equity and Performance Incentive Plan, as amended (incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.23+</u></a>	<a href="#"><u>Form of Director and Officer Indemnification Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 5, 2006, SEC File No. 1-16091)</u></a>
<a href="#"><u>10.24+</u></a>	<a href="#"><u>Form of 2014 Award Agreement under the PolyOne Corporation 2010 Equity and Performance Incentive Plan, as amended (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, SEC File No. 1-16091)</u></a>

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Exhibit No.	Exhibit Description
<a href="#"><u>21.1**</u></a>	<a href="#"><u>Subsidiaries of the Company</u></a>
<a href="#"><u>23.1**</u></a>	<a href="#"><u>Consent of Independent Registered Public Accounting Firm - Ernst &amp; Young LLP</u></a>
<a href="#"><u>31.1**</u></a>	<a href="#"><u>Certification of Robert M. Patterson, Chairman, President and Chief Executive Officer, pursuant to SEC Rules 13a-14(a) and 15d-14(a), adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
<a href="#"><u>31.2**</u></a>	<a href="#"><u>Certification of Bradley C. Richardson, Executive Vice President and Chief Financial Officer, pursuant to SEC Rules 13a-14(a) and 15d-14(a), adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
<a href="#"><u>32.1**</u></a>	<a href="#"><u>Certification pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as signed by Robert M. Patterson, Chairman, President and Chief Executive Officer</u></a>
<a href="#"><u>32.2**</u></a>	<a href="#"><u>Certification pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as signed by Bradley C. Richardson, Executive Vice President and Chief Financial Officer</u></a>
101 .INS**	Inline XBRL Instance Document
101 .SCH**	Inline XBRL Taxonomy Extension Schema Document
101 .CAL**	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101 .LAB**	Inline XBRL Taxonomy Extension Label Linkbase Document
101 .PRE**	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101 .DEF**	Inline XBRL Taxonomy Definition Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

+ Indicates management contract or compensatory plan, contract or arrangement in which one or more directors or executive officers of the Registrant may be participants

† The exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request.

\*\* Filed herewith.

## **ITEM 16. FORM 10-K SUMMARY**

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### POLYONE CORPORATION

February 18, 2020

BY: /S/ BRADLEY C. RICHARDSON  
Bradley C. Richardson Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated and on the dates indicated.

Signature and Title		
<u>/S/ ROBERT M. PATTERSON</u> Robert M. Patterson	Chairman, President and Chief Executive Officer (Principal Executive Officer)	February 18, 2020
<u>/S/ BRADLEY C. RICHARDSON</u> Bradley C. Richardson	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 18, 2020
<u>/S/ ROBERT E. ABERNATHY</u> Robert E. Abernathy	Director	February 18, 2020
<u>/S/ RICHARD H. FEARON</u> Richard H. Fearon	Director	February 18, 2020
<u>/S/ GREGORY J. GOFF</u> Gregory J. Goff	Director	February 18, 2020
<u>/S/ WILLIAM R. JELLISON</u> William R. Jellison	Director	February 18, 2020
<u>/S/ SANDRA BEACH LIN</u> Sandra Beach Lin	Director	February 18, 2020
<u>/S/ KIM ANN MINK</u> Kim Ann Mink	Director	February 18, 2020
<u>/S/ KERRY J. PREETE</u> Kerry J. Preete	Director	February 18, 2020
<u>/S/ PATRICIA VERDUIN</u> Patricia Verduin	Director	February 18, 2020
<u>/S/ WILLIAM A. WULFSOHN</u> William A. Wulfsohn	Director	February 18, 2020

## Share Purchase Agreement

Dated December 19, 2019

by and between

Clariant AG  
Rothausstrasse 61, 4132 Muttenz, Switzerland

(hereinafter **Seller**)

and

PolyOne Corporation  
33587 Walker Road, Avon Lake, Ohio USA 44012

(hereinafter **Buyer**)

(Seller and Buyer each a **Party**  
and together the **Parties**)

regarding the sale and purchase of all shares in Clariant Plastics &  
Coatings AG and such other assets described herein

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## Whereas

- A. Clariant Plastics & Coatings AG (the **Company**) is a corporation organized and existing under the Laws of Switzerland, registered under identification number CHE-112.279.714 with its registered office at Rothausstrasse 61, 4132 Muttenz, Switzerland, with a nominal share capital of CHF 30,804,000, divided into 30,804 registered shares with a nominal value of CHF 1,000 each (each a **Share** and collectively the **Shares**).
- B. (i) Seller directly or indirectly owns all of the equity interests in its Subsidiaries set forth in Annex B-1 (each a **Dedicated Wholly Owned Subsidiary**), (ii) Seller directly or indirectly owns the equity interests in its Subsidiaries as set forth in Annex B-2(i) (each a **Shared Wholly Owned Subsidiary**) and all of the equity interest in its Subsidiary set forth in Annex B-2(ii) (the **Direct-Sale Subsidiary**, and together with the Dedicated Wholly Owned Subsidiaries and the Shared Wholly Owned Subsidiaries, the **Existing Business Subsidiaries**), (iii) the Company directly owns the percentage of the equity interests in its Subsidiaries set forth in Annex B-3 (each a **Dedicated JV Subsidiary**, and (iv) the Company will, following the completion of the Separation, directly or indirectly own all of the equity interests in the entities set forth in Annex B-4 (each a **NewCo Subsidiary**, collectively with each Existing Business Subsidiary, the **Target Subsidiaries**; the Company and each Target Subsidiary a **Target Group Company** and collectively the **Target Group Companies** or the **Target Group**). Seller, currently through the Company, the Existing Business Subsidiaries and certain other Subsidiaries of Seller (such other Subsidiaries, which, for the avoidance of doubt, do not include any of the Existing Business Subsidiaries or the NewCo Subsidiaries, but do include those Subsidiaries of Seller set forth in Annex B-5, the **Excluded Subsidiaries**, and together with the Existing Business Subsidiaries, the **Current Subsidiaries**, and together with the Company and the Existing Business Subsidiaries, the **Current Group**), is engaged in, among other businesses (such other businesses, the **Excluded Businesses**), the development, production, manufacturing, procurement, processing, sale, distribution, design, marketing, supply and commercialization of color and additive concentrate solutions in a liquid or solid polymer carrier for plastics processing (masterbatches) and certain other activities related to the masterbatches business, including polymer distribution and polymer compounding (excluding such business of Seller or its Subsidiaries to the extent carried out in India, the **Business**). Seller is currently separating the Excluded Businesses from the Business within the Current Group in accordance with the terms of this Agreement and the Separation Concept so that after completion of the Separation, (i) the Business will be solely conducted on a standalone basis by German Seller, Peruvian Seller, the Target Group and the Dedicated JV Subsidiaries (after giving effect to the Ancillary Agreements), (ii) the Target Group will be exclusively dedicated to the Business, (iii) Seller will, directly or indirectly, own all of the equity interests in the Direct-Sale Subsidiary and (iv) the Company will, directly or indirectly, own the equity interests in each of the Dedicated Wholly Owned Subsidiaries, the Shared Wholly Owned Subsidiaries and the NewCo Subsidiaries as set forth in Annex B-1, Annex B-2(i) and Annex B-4, respectively, and the equity interests in the Dedicated JV Subsidiaries set forth in Annex B-3 (the **Separation**).
- C. As of the date of this Agreement, Seller has granted the Company and certain Existing Business Subsidiaries the shareholder loans set forth in Annex C (the **Shareholder Loans**).

- D. Seller intends to (i) cause Clariant Corporation, a New York corporation and wholly owned Subsidiary of Seller (**US Seller**), to sell all of the equity interests in Clariant Plastics & Coatings USA LLC (**US Target**) to Buyer, and Buyer intends to purchase, all of the equity interests in US Target from US Seller, (ii) cause Clariant Plastics & Coatings (Deutschland) GmbH, a German limited liability company and wholly owned Subsidiary of Seller (**German Seller**), to sell the German Real Property to PolyOne International Real Estate Corporation, an Ohio corporation and wholly owned Subsidiary of Buyer (**German Buyer**), and Buyer intends to cause German Buyer to purchase the German Real Property from German Seller, (iii) cause Clariant Plastics & Coatings (Peru) S.A.C., a Peruvian corporation and wholly owned Subsidiary of Seller (**Peruvian Seller**), to sell all of its assets related to the Business (the **Peruvian Business**) to Sociedad Química Alemana, S.A., a Peruvian joint stock company and wholly owned Subsidiary of Buyer (**Peruvian Buyer**), and Buyer intends to cause Peruvian Buyer to purchase the Peruvian Business from Peruvian Seller, and (iv) sell the Shares, and the Shareholder Loans to ColorMatrix Holdings, Inc., a Delaware corporation and wholly owned Subsidiary of Buyer, and PolyOne Europe Finance S.a.R.L., a Luxembourg société a responsabilité limitée and wholly owned Subsidiary of Buyer (the **Swiss Buyers**), and Buyer intends to cause the Swiss Buyers to purchase the Shares and the Shareholder Loans from Seller, pursuant to the terms and conditions of this Agreement.

Now, therefore, the Parties agree as follows:

## 1. Definitions

Capitalized terms used and not otherwise defined in this Agreement shall have the meanings ascribed to them in Annex 1.

## 2. Sale and Purchase of Shares

### 2.1 Object of Sale and Purchase

On the terms and subject to the conditions of this Agreement:

- a. Seller hereby agrees to sell, and agrees to transfer at Closing, to the Swiss Buyers and/or one or more of their designated Affiliates, and Buyer hereby agrees that the Swiss Buyers and/or one or more of their designated Affiliates will purchase, and agree to accept at Closing, from Seller, full legal and beneficial ownership of the Shares, free and clear of any Lien;
- b. Seller hereby agrees to sell, and agrees to assign at Closing, to the Swiss Buyers and/or one or more of their designated Affiliates, and the Swiss Buyers hereby agree that the Swiss Buyers and/or one or more of their designated Affiliates will purchase, accept and assume from Seller at Closing, full legal and beneficial ownership of the Shareholder Loans, all as set forth in Annex C (as amended by Seller prior to Closing to reflect each Shareholder Loan entered into, modified or amended after the date of this Agreement substantially on the terms set forth on Annex C in accordance with this Agreement, and to reflect the principal amount outstanding under such Shareholder Loans as of the Closing Date, together with interest accrued thereon), free and clear of any Lien;

- c. Seller hereby agrees to sell, and agrees to cause US Seller to transfer at Closing, to Buyer and/or one or more of its designated Affiliates, and Buyer hereby agrees that it and/or one or more of its designated Affiliates will purchase, and accept at Closing, from US Seller, full legal and beneficial ownership of all of the equity interests in US Target, free and clear of any Lien other than Permitted Liens (the **US Sale**);
- d. Seller hereby agrees to sell, and agrees to cause German Seller to transfer at Closing, to German Buyer and/or one or more of its designated Affiliates, and Buyer hereby agrees that German Buyer and/or one or more of its designated Affiliates will purchase and accept at Closing, from German Seller full legal and beneficial ownership of the German Real Property free and clear of any Lien other than Permitted Liens (the **German Property Sale**); and
- e. Seller hereby agrees to sell, and agrees to cause Peruvian Seller to transfer at Closing, to Peruvian Buyer and/or one or more of its designated Affiliates, and Buyer hereby agrees that Peruvian Buyer and/or one or more of its designated Affiliates will purchase and accept at Closing, from Peruvian Seller full legal and beneficial ownership of the Peruvian Business free and clear of any Lien other than Permitted Liens (the **Peruvian Business Sale**).

For the avoidance of doubt, none of Seller, US Seller, German Seller or Peruvian Seller will sell or transfer to Buyer or its designees, and none of Buyer or its designees will purchase, accept, or otherwise obtain any right, title or interest in any Excluded Asset or assume, become responsible for or acquire any Excluded Liability.

## 2.2 Preliminary Consideration

### 2.2.1 Preliminary Consideration

- a. The aggregate consideration payable by Buyer and its designees (if any) to Seller, US Seller, German Seller and Peruvian Seller for the Shares, the US Sale, the German Property Sale and the Peruvian Business Sale in accordance with Section 3.5.3(a) (the **Preliminary Consideration**) shall be equal to:
  - i. USD 1,500,000,000;
  - ii. *plus* the Estimated Net Debt (it being understood that, in accordance with the Preparation Guide, Debt is expressed as negative number and, thus, if Debt is greater than Cash, Net Debt will be a negative number and Net Debt is, in such case, to be deducted from the USD amount under subsection (i) above);
  - iii. *plus* the Estimated Net Working Capital; and
  - iv. *minus* the Net Working Capital Target Amount.
- b. The Preliminary Consideration shall be adjusted in accordance with Sections 2.4 and 2.8.



### 2.2.2 Fixed Loan Consideration

The fixed consideration for the Shareholder Loans shall be the aggregate principal amount outstanding under the Shareholder Loans as of the Closing Date, together with interest accrued thereon, all as set forth in Annex C, as amended (in accordance with Section 5.4.13(b)) by Seller at least 5 (five) Business Days prior to Closing to reflect the amount outstanding under such Shareholder Loans as of the Closing Date, together with interest accrued thereon (the **Fixed Loan Consideration**). For the avoidance of doubt, an amount equal to the Fixed Loan Consideration shall be treated as Debt in accordance with the Preparation Guide.

### 2.3 Delivery of Estimated Net Debt and Estimated Net Working Capital

Seller shall deliver the Estimated Net Debt and Estimated Net Working Capital (together the **Estimates**) to Buyer no later than 5 (five) Business Days prior to the anticipated Closing Date, together with reasonable documentation supporting the calculation of the Estimates. If Buyer disagrees with the Estimates as proposed by Seller, Buyer and Seller shall in good faith try to resolve any differences amongst them with regard to the Estimates for purposes of Closing. Absent agreement on the Estimates on the 3rd (third) Business Day prior to the anticipated Closing Date, the Estimates established by Seller shall be used for purposes of calculating the Preliminary Consideration (which shall, for the avoidance of doubt, be subject to the post-closing adjustments pursuant to Section 2.4).

### 2.4 Determination of Adjustments and Adjustment Payments

The Final Net Debt, the Final Net Working Capital and the resulting Final Adjustment shall be determined by establishing the Final Completion Accounts in accordance with Annex 2.4 Part 1 and the Completion Accounts Preparation Guide in Annex 2.4 Part 2 (the **Preparation Guide**).

#### 2.4.1 Net Debt Adjustment

- a. If the Final Net Debt is more negative or less positive than the Estimated Net Debt, Seller shall, subject to the terms and conditions of this Agreement, pay an amount equal to the absolute value of such difference to Buyer in accordance with Section 2.4.3.
- b. If the Final Net Debt is less negative or more positive than the Estimated Net Debt, Buyer shall, subject to the terms and conditions of this Agreement, pay an amount equal to the absolute value of such difference to Seller in accordance with Section 2.4.3.
- c. Any payment made pursuant to this Section 2.4.1 shall be treated as an adjustment to the Preliminary Consideration for accounting and tax purposes, including US federal income (and other applicable) tax purposes, except to the extent otherwise required by applicable Law.

#### 2.4.2 Net Working Capital Adjustment

- a. If the Final Net Working Capital is greater than the Estimated Net Working Capital, Buyer shall, subject to the terms and conditions of this Agreement, pay an amount equal to such excess to Seller in accordance with Section 2.4.3.

- b. If the Final Net Working Capital is less than the Estimated Net Working Capital, Seller shall, subject to the terms and conditions of this Agreement, pay an amount equal to such shortfall to Buyer in accordance with Section 2.4.3.
- c. Any payment made pursuant to this Section 2.4.2 shall be treated as an adjustment to the Preliminary Consideration for accounting and tax purposes, including US federal income (and other applicable) tax purposes, except to the extent otherwise required by applicable Law.

### **2.4.3 Adjustment Payment**

The Final Adjustment and any JV Adjustment shall be due and payable and shall be paid by or on behalf of the relevant Party by wire transfer in immediately available funds in USD within 10 (ten) Business Days after the date on which the Proposed Adjustment becomes the Final Adjustment in accordance with Annex 2.4 Part 1 or such JV Adjustment is determined to the bank account(s) designated in writing by the Party entitled to receive the Final Adjustment or JV Adjustment. Any payment made pursuant to this Section 2.4.3 shall be treated as an adjustment to the Preliminary Consideration for US federal income (and other applicable) Tax purposes, except to the extent otherwise required by applicable Law.

### **2.5 No Set-off Rights**

Except as provided in Section 2.6, neither Party shall be entitled to set off any of its claims that it may have against the other Party, or otherwise withhold the proper payment of, any amount payable by Buyer or Seller under this Agreement, regardless of whether such claim has arisen under or in connection with this Agreement or otherwise.

### **2.6 Withholding Rights**

Notwithstanding any other provision in this Agreement, Buyer and its Affiliates (or its designated Persons) shall be entitled to deduct and withhold from the amounts otherwise payable under this Agreement such amounts as may be required to be deducted and withheld under any applicable Law. To the extent that amounts are so deducted and withheld by Buyer or any Affiliate of Buyer, such deducted and withheld amounts (a) shall be remitted by Buyer or its Affiliate (or its designated Person) to the applicable Tax Authority with proof thereof provided to Seller within five Business Days, and (b) shall in that case be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. If Buyer determines that any such deduction or withholding is so required, Buyer shall (x) promptly (and no later than five Business Days prior to the date on which such payment is made or, in the case of a change in applicable Law within such five-day period, as soon as practicable) notify Seller of any intention to so deduct and withhold and provide Seller the opportunity to provide any statement, form, or other documentation that would reduce or eliminate any such requirement to deduct and withhold, (y) pay such withholding tax to the respective Tax Authority and provide Seller with the proof of payment and copies of the documentation filed with the Tax Authority and (z) cooperate with Seller as reasonably requested with respect to the filing of any Tax Return or conduct of any claim relating to any available refund of such amount remitted. Seller shall reasonably cooperate with Buyer and shall provide such information as reasonably necessary for Buyer to determine whether any amounts are so required to be deducted and withheld.

## 2.7 Valuation

### 2.7.1 US Valuation

- a. The purchase price of the US Target (the **US Purchase Price**) is equivalent to USD 270 million (**US Valuation**), such US Valuation having been supported by a third party valuator as being the enterprise value of the US Target which shall be adjusted for purposes of the purchase price allocation in accordance with, *mutatis mutandis*, the Net Debt Adjustment and the Net Working Capital Adjustment set forth under Sections 2.4.1 and 2.4.2.
- b. Seller shall bear all costs and expenses related to engaging the third party valuator for the valuation pursuant to this Section 2.7.1.

### 2.7.2 Asset Allocation

The Parties agree that the US Purchase Price and the portion of the Preliminary Consideration that is allocable to the Peruvian Business (which amount shall be mutually agreeable to the Parties, the **Peru Purchase Price**) (and any other relevant amounts treated as consideration for US federal income (and other applicable) Tax purposes with respect to the US Sale and the Peruvian Business Sale) shall be allocated among the assets of US Target and the assets of the Peruvian Business, respectively, in accordance with Section 1060 of the US Code and the Treasury Regulations promulgated thereunder (the **US Allocation** and the **Peru Allocation**, respectively, and collectively, the **Asset Allocation**) (it being understood that it is the Parties' intention that the Asset Allocation shall not, in any way, contradict or otherwise put into question the US Valuation according to Section 2.7.1(a)). Within the later of 180 days after the Closing Date or 90 days after the Final Adjustment has become final and binding, Buyer shall prepare and deliver to Seller a scheduling setting forth Buyer's proposed Asset Allocation. Seller shall have 45 days after receipt of the draft Asset Allocation to submit to Buyer a written notice of objection, setting forth in reasonable detail the basis for such objection and Seller's proposed US Allocation and/or Peru Allocation. If Seller does not timely submit such a notice of objection, then the draft Asset Allocation as prepared by Buyer shall become final and binding on the Parties. If Seller does timely submit such a notice of objection, then Seller and Buyer shall negotiate in good faith to resolve the dispute. If Seller and Buyer are unable to fully resolve any such dispute within the 45 day period following Buyer's receipt of Seller's notice of objection, then Buyer and Seller shall submit all unresolved disputed items to the Accounting Firm (or, if the Accounting Firm is not available or otherwise unwilling or unable to resolve the dispute, another internationally recognized independent public accounting firm mutually agreeable to the Parties) for resolution in a manner consistent with the procedures set forth in Section 1(c) of Annex 2.4 Part 1.

### 2.7.3 Tax Reporting

- (a) The US Valuation and the Asset Allocation (as finally determined pursuant to Section 2.7.2) shall be final and binding on the Parties for US federal income (and applicable US state and local) Tax purposes, and the Parties will not, and will cause their Affiliates not to, take any position inconsistent with the US Valuation and the Asset Allocation on any Tax Return (including IRS Form 8594), in any Tax Audit or otherwise before any Tax Authority without the consent of the other Party (such consent not to be unreasonably withheld or delayed), except as otherwise

required by a determination within the meaning of Section 1313 of the US Code (or any analogous provision of US state or local or non-US Law).

- (b) In connection with the preparation of Seller Post-Closing Returns pursuant to Section 5.3.1(a), Seller may not deviate from the valuations for material carve-in and carve-out Separation Transactions as set forth in Annex 2.7.3(b) (the **Material Separation Valuations**) without the written consent of the Buyer, *provided, however*, that Seller may deviate from the Material Separation Valuations (x) by an amount not exceeding 10% of the Material Separation Valuations, (y) if required due to price adjustments attributable to the finalization of net working capital or other similar and customary purchase price adjustment under local transfer agreements for the applicable Separation Transaction, or (z) if required by a final determination of any Tax Authority or order of a court of competent jurisdiction. The Material Separation Valuations and the other Separation Valuations shall be final and binding on the Parties for purposes of reporting the Tax consequences of Separation Transactions to applicable Target Group Companies, including establishing, in the case of a carve-in Separation Transaction, the applicable Target Company's initial Tax basis in the assets acquired in such Separation Transaction and, in the case of a carve-out Separation Transaction, the capital gains or losses resulting from such Separation Transactions, in each case, except as otherwise required by a determination within the meaning of Section 1313 of the US Code (or any analogous provision of US state or local or non-US Law). With respect to any Material Separation Valuation that is not designated as "Final" in the "Status" column in Annex 2.7.3(b), Seller will provide a copy of such valuation, together with supporting reports and analysis from the applicable valuation firm, to Buyer within 5 (five) Business Days of such valuation being finally determined.

## 2.8 Non-Transferring JV Adjustment

Prior to Closing, Seller shall, and shall cause its Affiliates to, provide notice to each shareholder of the Dedicated JV Subsidiaries of the Transactions substantially in the form attached hereto as Annex 2.8. If, following the consummation of any of the Transactions, the Company no longer directly owns the percentage of the equity interest in a Dedicated JV Subsidiary as set forth in Annex B-3, Seller shall, subject to the terms and conditions of this Agreement, pay an amount equal to the JV Adjustment to Buyer in accordance with Section 2.4.3.

## 3. Closing

### 3.1 Date and Place

Closing shall take place at the offices of Homburger AG, Prime Tower, Hardstrasse 201, 8005 Zurich, Switzerland, on the last calendar day of the month (or, if such day is not a Business Day, on the first Business Day thereafter) following the 3<sup>rd</sup> (third) Business Day after the day on which all conditions precedent to Closing as set forth in Section 3.2 have been satisfied or waived (where so permitted), provided that such Closing Date shall not be January 31, or on such other Business Day being the last calendar day of a month (or, if the last calendar day of such month is not a Business Day, on the first Business Day thereafter) except for January as the Parties may agree upon in writing; *provided further*, that if the Marketing Period has not ended as of the above referenced time, Closing will occur on the earlier of (a) a date (which may only be the last calendar day of a month (or, if such day is not a Business

Day, on the first Business Day thereafter)) during the Marketing Period specified by Buyer in writing on no fewer than three Business Days' notice to Seller (a **Closing Date Notice**) and (b) the last calendar day of the month (or, if such day is not a Business Day, on the first Business Day thereafter) immediately following the last day of the Marketing Period (subject, in each case, to the satisfaction or waiver of the conditions set forth in Section 3.2).

## **3.2 Conditions Precedent to Closing**

### **3.2.1 Parties' Conditions**

The respective obligations of the Parties to consummate the Transactions shall be subject to the satisfaction or waiver (where so permitted), on or prior to Closing, of the following conditions:

- (a) the governmental approvals with respect to the Merger Control Laws in the jurisdictions set forth in Annex 3.2.1(a) (the **Governmental Approvals**) shall have been obtained (including subject to the satisfaction of conditions, requirements or commitments reasonably acceptable to Seller and Buyer) and/or all expirations and waiting periods under the Governmental Approvals shall have expired or been terminated by the applicable Governmental Authority;
- (b) no order or injunction of any Governmental Authority shall exist which prohibits the consummation of the Transactions; and
- (c) the Separation shall have been completed in accordance with the terms of this Agreement and the Separation Concept other than with respect to transactions that impact only immaterial assets of the Business taken as a whole.

### **3.2.2 Seller's Conditions**

The obligation of Seller to consummate the Transactions shall be subject to the satisfaction or waiver (where so permitted), on or prior to Closing, of the following conditions:

- (a) the representations and warranties of Buyer set forth in Section 4.2 (including Annex 4.2) (without giving effect to any qualification as to materiality contained therein) shall be true and correct, as of the date of this Agreement and as of Closing as though made on and as of Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct only as of such date), other than for such failures to be so true and correct that, individually or in the aggregate, have not had and would not reasonably be expected to have a material adverse effect on the ability of Buyer to consummate the Transactions; and
- (b) Buyer shall have performed or complied in all material respects with each of the covenants and agreements required to be performed or complied with by it under this Agreement at or prior to Closing.

### 3.2.3 Buyer's Conditions

The obligation of Buyer to consummate the Transactions shall be subject to the satisfaction or waiver (where so permitted), on or prior to Closing, of the following conditions:

- (a) (i) Except for the Fundamental Representations and Section 7(a)(ii) of Annex 4.1, the representations and warranties of Seller set forth in Section 4.1 (including Annex 4.1) (without giving effect to any qualification as to materiality or Material Adverse Effect contained therein) shall be true and correct, as of the date of this Agreement and as of Closing as though made on and as of Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct only as of such date), other than for such failures to be so true and correct that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect, and (ii) the Fundamental Representations (other than Sections 3(b) (*Organization*) and 5(d) (*Subsidiaries*) and the second sentence of 23(a) (*Title to Assets; Condition of Assets Fixed*) of Annex 4.1) (without giving effect to any qualification as to materiality or Material Adverse Effect contained therein) shall be true and correct, as of the date of this Agreement and as of Closing as though made on and as of Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct, as of such date), in all material respects, and (iii) the representations and warranties in Sections 3(b) (*Organization*), 5(d) (*Subsidiaries*), 7(a)(ii) (*Conduct of Business*), and the second sentence of 23(a) (*Title to Assets; Condition of Assets Fixed*) of Annex 4.1 shall be true and correct, as of the date of this Agreement and as of Closing as though made on and as of Closing; and
- (b) Seller shall have performed or complied in all material respects with each of the covenants and agreements required to be performed or complied with by it under this Agreement at or prior to Closing.

### 3.3 Waiver of Conditions Not-Satisfied

At any time prior to Closing, (a) Seller and Buyer may jointly waive in writing in whole or in part any or all of the conditions set forth in Section 3.2.1, (b) Seller may waive in writing in whole or in part any or all of the conditions set forth in Section 3.2.2, and (c) Buyer may waive in writing in whole or in part any or all of the conditions set forth in Section 3.2.3.

### 3.4 Termination Rights

- (a) This Agreement may be terminated by mutual written agreement between the Parties.
- (b) Should any of the conditions precedent set forth in Section 3.2.1 not be satisfied by, or have become incapable of being satisfied within, 12 (twelve) months from the date of this Agreement (the **Long Stop Date**), either Party may terminate this Agreement by giving notice to the other Party, *provided, however*, that any such unsatisfied condition was not primarily caused by a material breach by the terminating Party of any of its obligations under this Agreement and the

terminating Party did not act in bad faith or did otherwise intentionally prevent, frustrate or interfere with the satisfaction of such condition precedent.

- (c) Should (i) any of the conditions precedent set forth in Section 3.2.2 not be satisfied and have become incapable of being satisfied, on or before the Long Stop Date, Seller may terminate this Agreement by giving notice to Buyer, *provided, however*, that any such unsatisfied condition was not primarily caused by a material breach by Seller of any of its obligations under this Agreement and Seller did not act in bad faith or did otherwise prevent, frustrate or interfere with the satisfaction of such condition precedent or (ii) any of the conditions precedent set forth in Section 3.2.3 not be satisfied and have become incapable of being satisfied, on or before the Long Stop Date, Buyer may terminate this Agreement by giving notice to Seller, *provided, however*, that any such unsatisfied condition was not primarily caused by a material breach by Buyer of any of its obligations under this Agreement and Buyer did not act in bad faith or did otherwise intentionally prevent, frustrate or interfere with the satisfaction of such condition precedent.
- (d) By Seller if (i) all of the conditions set forth in Section 3.2.1 and Section 3.2.3 are satisfied, (ii) Buyer failed to consummate the Transactions on the date that Closing should have occurred pursuant to Section 3.1, (iii) Seller has irrevocably confirmed in writing to Buyer that (A) the conditions set forth in Section 3.2.1 and Section 3.2.3 to Seller's obligations have been satisfied (or waived in accordance with Section 3.3), and (B) Seller is ready, willing and able to take the actions within its control to cause Closing to occur, and (iv) Buyer fails to consummate the Transactions, on the terms and subject to the conditions set forth in this Agreement, within 3 (three) Business Days following delivery of the confirmation by Seller required by clause (iii) of this Section 3.4(d).
- (e) If this Agreement is terminated pursuant to Section 3.4(b) or Section 3.4(c), such termination shall be without Liability of either Party to the other Party, *provided, however*, that if such termination is the result of a willful failure of a Party to fulfill any obligation or covenant under this Agreement or if a Party acted in bad faith or otherwise intentionally prevented, frustrated or interfered with the satisfaction of any of the conditions precedent set forth in Section 3.2, such Party shall, notwithstanding any other provision of this Agreement, be fully liable for all Losses incurred or sustained by the other Party as a result of such misconduct or failure; it being agreed and understood that, in addition to such Liability, (i) either Party shall be entitled to seek relief in the form of specific performance, injunctions or other interim measures and (ii) the other Party shall not oppose the granting of such relief on the basis that the Party seeking such relief may be made whole by the payment of a monetary amount. Nothing in this Section 3.4(e) shall be deemed to release any Party from any Liability for any breach by such Party of the terms and provisions of this Agreement.
- (f) If this Agreement is validly terminated by Seller pursuant to Section 3.4(d), then within 10 (ten) Business Days following such termination, Buyer shall pay to Seller by wire transfer in immediately available funds an amount equal to CHF 75,000,000 (seventy-five million) (such amount, the **Termination Fee**). In no event shall Buyer be required to pay the Termination Fee on more than one occasion. Buyer and Seller acknowledge that (i) the Termination Fee and other provisions of this Section 3.4 are an integral part of the Transactions, (ii) without these

agreements, Buyer and Seller would not enter into this Agreement, and (iii) any amount payable pursuant to this Section 3.4 does not constitute a penalty but is liquidated damages in a reasonable amount that will compensate Seller in the circumstances in which such amounts are payable for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision.

- (g) Notwithstanding anything in this Agreement to the contrary, in the event of the termination of this Agreement pursuant to Section 3.4(d), (i) Buyer shall not have any Liability or obligation as a result of, in connection with, relating to or arising out of this Agreement or any other documents and transactions contemplated thereby except Buyer's obligation to pay the Termination Fee and (ii) the right of Seller to receive, and the receipt by Seller of, the Termination Fee shall be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of Seller and its Affiliates against Buyer, the Debt Financing Sources and each of their respective Affiliates for any Losses suffered by Seller and its Affiliates as a result of the failure of Closing to occur or for any breach or failure to perform hereunder, and none of Buyer or its Affiliates shall have any further Liability relating to or arising out of this Agreement or the Transactions; *provided that*, in no event shall Seller or its Affiliates be entitled to seek or obtain any recovery or judgment in excess of the Termination Fee, and in no event shall Seller or its Affiliates be entitled to seek or obtain any other damages (monetary or otherwise) of any kind against any of Buyer or its Affiliates for, or with respect to, this Agreement or the Transactions, including any breach by Buyer, the termination of this Agreement, the failure to consummate the Transactions or any claims, proceedings or actions under applicable Law arising out of any such breach, termination or failure (it being agreed and understood for the avoidance of doubt that under no circumstances shall any Debt Financing Source or any of its Affiliates have any Liability in respect of the Termination Fee or any other Liability to Seller or any of its Affiliates arising hereunder or in connection herewith); *provided that*, the foregoing shall not limit the right of Seller to seek specific performance of this Agreement pursuant to, and subject to the limitations in, Section 8.10 prior to the termination of this Agreement; *provided further*, that in no event shall Seller be entitled to both: (x) the payment of the Termination Fee and (y) the grant of specific performance of Buyer's obligation to consummate Closing.
- (h) If this Agreement is terminated, all provisions of this Agreement shall cease to be effective except for this Section 3.4 and Sections 5.1.4(d) (*Debt Financing*), 5.4.1 (*Public Announcements*), 5.4.2 (*Confidentiality*), 5.4.5(b) (*No Claims against Directors and Officers*), 8 (*General Provisions*) and 9 (*Governing Law and Arbitration*).

### **3.5 Closing Actions**

#### **3.5.1 Closing Memorandum**

No later than 5 (five) Business Days prior to the anticipated Closing Date, Seller shall cause its legal counsel to prepare, in cooperation with, and approval of, Buyer's legal counsel, a closing memorandum which describes the closing actions pursuant to this Section 3.5 and which shall serve as evidence for the consummation of such closing actions. The Parties understand and agree that such closing



memorandum shall not alter or amend any of the representations, warranties, covenants or other provisions or obligations of the Parties set forth in this Agreement.

### 3.5.2 Actions by Seller

At Closing, concurrently with, and in exchange for (*Zug um Zug*), the closing deliverables and payment by Buyer pursuant to Section 3.5.3, Seller shall deliver to Buyer the following:

- (a) the original share certificate representing all Shares duly endorsed to Buyer;
- (b) the equity interest transfer agreement concerning the US Sale, duly executed by US Seller and substantially in the form as attached hereto as Annex 3.5.2(b), as applicable, and all such other documents as may be required under applicable Law to transfer the equity interest of US Target from US Seller to Buyer or its designated Affiliate, each in form and substance reasonably acceptable to Buyer;
- (c) assignment declarations to Buyer with respect to all interest of Seller in the Shareholder Loans, in form and substance reasonably acceptable to Buyer;
- (d) a copy of the board resolution of Seller approving the transfer of the Shares and the Shareholder Loans from Seller to Buyer with effect as of and subject to Closing;
- (e) a copy of the written consent of US Seller approving the US Sale with effect as of and subject to Closing;
- (f) a copy of the resolution of the supervisory board (*Aufsichtsrat*) of German Seller approving the German Property Sale subject to Closing;
- (g) a copy of the resolution of the board of directors of the Company approving the transfer of the Shares and the registration of Buyer in the shareholders register of the Company with full voting rights for all Shares effective as of Closing, together with the updated share register of the Company showing Buyer as the sole shareholder of the Company with all voting rights and free and clear from any Lien;
- (h) resignation letters signed by each director or officer of the Company listed in Annex 3.5.2(h), in which such resigning director or officer declares his or her resignation as of Closing, subject to full discharge by the competent corporate body of the Company, and confirms that it has no outstanding claims against the Company or any of its Subsidiaries;
- (i) the Separation Completion Notice, unless the Separation Completion Notice was previously delivered to Buyer;
- (j) each of the Ancillary Agreements to which Seller or its Affiliates is a party, duly executed by such party;

- (k) evidence that the Separation has been completed in accordance with the terms of this Agreement and the Separation Concept, as amended, including evidence that the Company directly or indirectly owns the equity interests in each Dedicated Wholly Owned Subsidiary, Shared Wholly Owned Subsidiary and NewCo Subsidiary as set forth in Annex B-1, Annex B-2(i), and Annex B-4, respectively, and the percentage of the equity interests in the Dedicated JV Subsidiaries set forth in Annex B-3;
- (l) written confirmation from the German Seller addressed to (i) the German notary (notarizing the German Property Sale Agreement) and (ii) the German Buyer that the purchase price under and in accordance with the German Property Sale Agreement has been paid;
- (m) the asset purchase agreement in the form attached to this Agreement as Annex 3.5.2(m) concerning the Peruvian Business Sale (the **Peruvian Business Sale Agreement**), duly executed by Peruvian Seller (and written evidence of all corporate actions required under applicable Law and Peruvian Seller's articles of association (if any), contingent on the completion of Closing, to approve the Peruvian Business Sale with effect as of and subject to Closing); *provided, however*, that if such agreement requires a purchase price due to applicable Law, Buyer and Seller shall agree to such purchase price prior to Closing;
- (n) (i) a non-foreign person affidavit dated as of the Closing Date, prepared in accordance with Treasury Regulation Section 1.1445-2(b)(2) and in form and substance reasonably acceptable to Buyer, certifying that US Seller is not a "foreign person" as defined in Section 1445 of the US Code and (ii) an IRS Form W-9, in each case, duly executed by US Seller;
- (o) with respect to Taxes, an overview over all relevant Blocking Periods, restricted actions and similar restrictions and obligations as a result of the Separation, and all relevant excerpts of the Tax rulings obtained by Seller or any Excluded Subsidiary with respect to these restrictions listed in Annex 5.3.2(a) (which rulings may be redacted to the extent they contain information that Seller, in consultation with Buyer, determines to be confidential or not relevant to the Target Companies or the Business); and
- (p) the agreement contemplated in Section 5.4.17(d), duly executed by Seller and/or its relevant Affiliate(s).

### 3.5.3 Actions by Buyer

At Closing, concurrently with, and in exchange for (*Zug um Zug*), the deliverables of Seller in accordance with Section 3.5.2, Buyer shall:

- (a) pay the Preliminary Consideration and the Fixed Loan Consideration, in each case in USD, to the bank account(s) of Seller provided in writing to Buyer at least 5 (five) Business Days prior to Closing;
- (b) deliver to Seller each of the Ancillary Agreements to which Buyer or its Affiliates is a party, duly executed by such party; and

- (c) deliver to Seller the agreement contemplated in Section 5.4.17(d), duly executed by Buyer and/or its relevant Affiliate(s).

### **3.5.4 Concurrent Closing Actions**

All actions to be taken and documents to be delivered by the Parties at Closing shall be deemed to have been taken, executed and delivered simultaneously and to have occurred only if and when all such actions and documents have been taken, executed and delivered. In the event that Closing cannot be completed, the Parties undertake to use their reasonable best efforts to unwind all closing actions initiated or taken.

## **4. Representations**

### **4.1 Representations of Seller**

Subject to the limitations set forth in this Agreement and in accordance with Section 7.1.4, Seller hereby represents and warrants to Buyer that the representations and warranties set forth in Annex 4.1 are true and correct as of the date of this Agreement and as of the Closing Date, except that those representations and warranties which are explicitly made as of a specified date shall be true and correct as of such specified date only.

### **4.2 Representations of Buyer**

Subject to the limitations set forth in this Agreement, Buyer hereby represents and warrants to Seller that the representations and warranties as set forth in Annex 4.2 are true and correct as of the date of this Agreement and as of the Closing Date, except that those representations which are explicitly made as of a specified date shall be true and correct as of such specified date only.

### **4.3 Exclusive Representations**

- (a) Each Party acknowledges that, other than as expressly provided in this Agreement, the other Party has not made, and does not make, and has not relied and does not rely on, any representation or warranty, express or implied, relating to the subject matter of this Agreement. Buyer acknowledges that Seller does not make any representations or warranties as to the future development of any Target Group Company and/or the Business and does not and did not make any representations regarding projections of a financial nature relating to the Business and/or any Target Group Company.
- (b) To the extent a matter is specifically addressed by a representation or warranty of a Party in Annex 4.1 or Annex 4.2 and also generally addressed by a different representation or warranty of such Party in Annex 4.1 or Annex 4.2, as applicable, the specific representation or warranty shall be given effect to the extent such matter is addressed therein and no other representation or warranty shall be deemed to be given with respect to such specified matter.

## **5. Covenants and Indemnities**

### **5.1 Actions Prior to Closing**

#### **5.1.1 General**

The Parties shall use reasonable best efforts to (a) procure that the conditions precedent set forth in Section 3.2 are fulfilled as promptly as practicable, shall cooperate in view thereof and shall inform each other of any actions taken or developments occurring in relation to, or which would be reasonably be expected to affect the timing of, Closing, (b) execute and deliver, or shall cause to be executed and delivered, such documents and shall take, or shall cause to be taken, such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the Transactions, and (c) refrain from taking any actions that would reasonably be expected to materially impair, delay or impede Closing (including by agreeing to acquire by merging or consolidating with, or by purchasing the assets of or equity in, any Person if such action would reasonably be expected to materially impair, delay or impede the obtaining of, or adversely affect the ability of the Parties to procure, any Governmental Approvals).

#### **5.1.2 Filings and Submissions**

- (a) No later than 30 (thirty) Business Days following the date of this Agreement, but subject to Section 5.1.2(c), Buyer, and to the extent required under applicable Law, Seller, shall make all filings and submissions (including where applicable, in draft form) to procure that the condition precedent set forth in Section 3.2.1(a) is satisfied as soon as possible after the date of this Agreement.
- (b) Subject to any constraints under applicable Law, Seller shall provide Buyer and Buyer shall provide Seller with all information reasonably necessary for such filings and submissions.
- (c) No Party shall make any such filings or submissions without the prior consent of the other Party, such consent not to be unreasonably withheld or delayed. Buyer shall provide Seller with the final drafts of all such filings and/or submissions within reasonable time before their planned filing or submission in order to allow Seller and its advisers to comment on any filings and/or submissions before their actual filing or submission and Buyer shall consider such comments as Buyer solely determines in good faith. Buyer shall have the principal responsibility for devising and implementing the strategy for obtaining all clearances under all Merger Control Laws, including decisions as to the timing of filings, and shall take the lead in all communications with any Governmental Authority in connection with obtaining all clearances under all Merger Control Laws.
- (d) The Parties each undertake, to the extent permissible under applicable Law, to keep the other informed as to progress towards satisfaction of the condition precedent set forth in Section 3.2.1(a) and shall for this purpose:
  - i. promptly (but in any case within two Business Days) notify the other Party (and provide copies or, in the case of non-written communications, material details) of any material

communications with any Governmental Authority relating to any required Governmental Approval where such communications have not been independently or simultaneously supplied to the other;

- ii. where reasonably requested and where permitted by the relevant Governmental Authority, allow persons nominated by the other Party to attend all meetings with the Governmental Authority and, where appropriate as Buyer solely determines, to make oral submissions at such meetings; and
- iii. regularly review with the other Party the progress of any notifications or filings with a view to obtaining the Governmental Approvals at the earliest reasonable opportunity.

### 5.1.3 Debt Financing

- (a) Buyer shall use its reasonable best efforts to do all things reasonably necessary, proper or advisable to consummate and obtain the Debt Financing on the terms and conditions not substantially less favorable to Buyer and its Affiliates than those contained in the Debt Financing Commitments, including using reasonable best efforts to seek to (i) maintain in effect the Debt Financing Commitments in accordance with the terms and subject to the conditions thereof, (ii) comply with their respective obligations under the Debt Financing Commitments and satisfy (or obtain a waiver of) on a timely basis (taking into account the anticipated timing of the Marketing Period) all conditions and covenants applicable to Buyer and that are within its control, in each case, in the Debt Financing Commitments, (iii) negotiate and enter into all definitive agreements with respect to the Debt Financing contemplated by the Debt Financing Commitments on the terms and conditions contained therein or on other terms not substantially less favorable to Buyer and its Affiliates than those contained in the Debt Financing Commitments, and (iv) enforce its rights under the Debt Financing Commitments and consummate the Debt Financing at or prior to Closing. Other than as set forth in this Section 5.1.3(b) below, Buyer shall not, without the prior written consent of Seller (such consent not to be unreasonably conditioned, withheld or delayed), permit any material amendment or modification to be made to, or any material waiver of any provision or remedy, under, the Debt Financing (it being understood that the exercise of any "market flex" provisions contained in any fee letter shall be deemed not to be an amendment, modification or waiver) if such amendments, modifications or waivers could reasonably be expected to (1) reduce the aggregate amount of the Debt Financing such that Buyer would not have sufficient cash proceeds to permit Buyer to pay the Preliminary Consideration and the Fixed Loan Consideration, (2) impose new or additional conditions to the receipt of the Debt Financing in a manner that would reasonably be expected to prevent or materially impair or delay Closing, (3) prevent or materially delay the consummation of the Transactions, or (4) adversely impact the ability of Buyer to enforce its rights against the other parties to the Debt Financing; *provided that* Buyer may amend, supplement or modify the Debt Financing Commitments to add or replace lenders, lead arrangers, bookrunners, syndication agents or similar entities (or titles with respect to such entities) and shall furnish to Seller a copy of any material amendment, modification, waiver or consent of or relating to the Debt Financing Commitments promptly upon execution thereof. Buyer will fully pay, or cause to be paid, all commitments or other fees arising pursuant to the Debt Financing Commitments as and when they become due.

- (b) Without limiting the generality of the foregoing, Buyer shall give Seller prompt written notice: (i) of any material default or breach (or any event that, with or without notice, lapse of time or both, would reasonably be expected to give rise to any material default or breach) by any party to any Debt Financing Commitments or definitive document related to the Debt Financing of which Buyer or its Affiliates becomes aware; (ii) of the receipt of any written notice or other communication from any Person with respect to any actual default, breach, termination or repudiation by any party to the Debt Financing Commitments or any definitive document related to the Debt Financing of any provisions of the Debt Financing Commitments or any definitive document related to the Debt Financing; and (iii) if for any reason Buyer has determined in good faith that it will not be able to obtain all or any portion of the Debt Financing necessary to consummate the Transactions pursuant to the Debt Financing Commitments.
- (c) If any portion of the Debt Financing becomes unavailable on the terms and conditions contemplated in the Debt Financing Commitments or one or more of the definitive agreements related to the Debt Financing (other than as a result of Seller's breach of any provision of this Agreement, or failure to satisfy the conditions set forth in Section 3.2), Buyer shall promptly use its reasonable best efforts to arrange and obtain alternative financing from alternative sources in such amount of the Debt Financing that becomes unavailable, on terms and conditions that are not substantially less favorable, in any material respect (as reasonably determined by Buyer), to Buyer than those contained in the Debt Financing Commitments and that do not, in any case, involve any conditions to funding the financing that are not contained in the Debt Financing Commitments and would not reasonably be expected to prevent, materially impede or materially delay the consummation of the financing, the Transactions or the transactions contemplated by the Ancillary Agreements and in an amount at least equal to the Debt Financing or such unavailable portion thereof, as the case may be (the **Alternate Debt Financing**), and to obtain a new financing commitment letter with respect to such Alternate Debt Financing which shall replace the existing Debt Financing Commitments, a true, complete and correct copy of which shall be promptly provided to Seller.
- (d) Buyer acknowledges and agrees that the obtaining of the Debt Financing, or any Alternate Debt Financing, is not a condition to Closing and reaffirms its obligation to consummate the Transactions irrespective and independently of the availability of the Debt Financing or any Alternate Debt Financing, subject to fulfillment or waiver of the conditions set forth in Section 3.2.

#### 5.1.4 Debt Financing Cooperation

- (a) Prior to Closing, Seller shall, and shall cause its Affiliates to, use its reasonable best efforts to cause any of its personnel and representatives (including legal and accounting representatives) to, use their reasonable best efforts to cooperate with Buyer as necessary in connection with the arrangement and obtaining of the Debt Financing or any debt being issued in lieu of all or a portion of the Debt Financing as may be reasonably requested by Buyer and is customary for financing of such type (*provided that* such requested cooperation does not unreasonably interfere with the ongoing operations of Seller or any of its Affiliates), including:
  - i. (1) furnishing Buyer and the Debt Financing Sources as promptly as reasonably practicable with (A) the audited combined balance sheets and statements of income and cash flows of the Business (including such business of Seller or its Subsidiaries to the extent carried out in

India) for fiscal years ending December 31, 2017, December 31, 2018 and December 31, 2019 (and fiscal year ending December 31, 2020, if the Closing Date occurs after December 31, 2020), prepared at Seller's own expense (the **Annual Financial Statements**), accompanied by the audit reports thereon of PricewaterhouseCoopers AG, Basel, and (B) unaudited combined balance sheets and related statements of income and cash flows of the Business (including such business of Seller or its Subsidiaries to the extent carried out in India) for the year-to-date period of each financial quarter beginning with the period ending September 30, 2019, and the portion of the fiscal year through the end of such quarter ended at least 45 days prior to the Closing Date and for the comparable period of the prior fiscal year, together with all related notes and schedules thereto, prepared at Seller's own expense (the **Interim Financial Statements**)), reviewed by PricewaterhouseCoopers AG, Basel, as provided in AU Section 722 promulgated by the Public Company Accounting Oversight Board, in the case of clauses (A) and (B), prepared in accordance with GAAP and in compliance with Regulation S-X, (2) furnishing Buyer and the Debt Financing Sources as promptly as reasonably practicable with all other customary financial information necessary to allow Buyer to prepare pro forma financial statements (including for the most recent four fiscal quarter period ended at least 45 days prior to the Closing Date) prepared in accordance with GAAP and Regulation S-X, in each case to the extent the same is of the type and form required to be included in a prospectus for an offering of securities by Buyer registered under the Securities Act, or otherwise necessary to receive from the independent auditors of Seller (and any other auditor to the extent financial statements audited or reviewed by such auditor are or would be included in such prospectus) customary "comfort" at the expense of Buyer (including "negative assurance" comfort) with respect to the financial information of the Business (including such business of Seller or its Subsidiaries to the extent carried out in India) to be included in such prospectus, and (3) using reasonable best efforts to allow the independent auditors of Seller to furnish consents for use of their unqualified audit reports in any materials relating to the Debt Financing or any debt being issued in lieu of all or a portion of the Debt Financing (the authorization letters referred to below, the draft comfort letters referred to below and all information specified in this clause (i), the **Required Information**);

- ii. causing Seller's management team, with appropriate seniority and expertise, at reasonable times and upon reasonable notice, to assist in preparation for and participate in a limited number of management and other meetings, conference calls, due diligence sessions and similar presentations to and with the Debt Financing Sources and rating agencies in connection with the Debt Financing or any debt being issued in lieu of all or a portion of the Debt Financing;
- iii. providing Buyer and the Debt Financing Sources with information necessary for the preparation of materials for customary prospectuses, lender presentations, roadshow presentations or memoranda, private placement memoranda, bridge teasers, syndication memoranda, bank information memoranda and similar documents and rating agency presentations required in connection with the Debt Financing or any debt being issued in lieu of all or a portion of the Debt Financing, including (1) records, data or other information reasonably necessary to (A) support any statistical information or claims relating to the business appearing in the aforementioned materials and (B) allow Buyer to prepare any

financial projections which are conditions to the availability of the Debt Financing and (2) rating agency presentations;

- iv. taking reasonable steps to facilitate, in each case subject to Closing, the granting of guarantees and the pledging, granting of security interests in, and otherwise granting of liens on, the assets of the Company, the Target Subsidiaries or the Business which are conditions to the availability of the Debt Financing pursuant to customary guarantee, pledge and security agreements to be effective from and after Closing;
- v. providing customary authorization letters to the Debt Financing Sources authorizing the distribution of information to prospective lenders (including customary 10b-5 and material non-public information representations);
- vi. authorizing the disclosure of certain information (by posting such information on DebtDomain, IntraLinks, SyndTrak Online or similar electronic means) identified by Buyer relating to the Business or the Target Subsidiaries for purposes of permitting such information to be included in marketing materials or memoranda for the Debt Financing (or any debt being issued in lieu of all or a portion of the Debt Financing) to be provided to potential investors who do not wish to receive material non-public information with respect to Seller and its Subsidiaries;
- vii. using reasonable best efforts to cause the independent auditors of Seller to furnish to Buyer and the Debt Financing Sources promptly with drafts of customary comfort letters that the independent auditors of Seller (and any other auditor to the extent financial statements audited or reviewed by such auditor are or would be included in such offering memorandum) are prepared to deliver upon "pricing" and "closing" of any debt being issued in lieu of all or a portion of the Debt Financing and using reasonable best efforts to cause such independent auditors to deliver such comfort letters upon the "pricing" and "closing" of any such debt securities; and
- viii. as soon as reasonably practicable, and in any event no later than three Business Days prior to Closing, providing all documentation and information that any lender, provider or arranger of any Debt Financing or trustee for the debt securities has reasonably requested at least ten days prior to the Closing Date in connection with such Debt Financing or debt securities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

*provided that* (1) neither Seller nor any of its Affiliates shall be required to pay any commitment or other similar fee or incur any cost or expense in connection with complying with this Section 5.1.4 in connection with the Debt Financing (other than with respect to procuring the Annual Financial Statements and the Interim Financial Statements), (2) the effectiveness of any documentation executed by Seller or its Subsidiaries with respect to the Debt Financing (except (A) the authorization letters set forth above, (B) the representation letters required by the Seller's auditors in connection with the delivery of "comfort letters" set forth above, and (C) any certificate of Seller or its Subsidiaries reasonably requested by Buyer's counsel in connection with the delivery of any legal opinions such counsel may be required to deliver) shall be subject to the completion of Closing and be effective at or after Closing, (3) neither Seller nor any of its respective Affiliates nor their respective pre-Closing directors, officers, employees, partners,



advisors, auditors, agents and representatives shall (X) be required to incur any liability under any indenture, credit agreement or related document or any other agreement or document related to the Debt Financing or any Alternate Debt Financing (except that the Company and the Target Subsidiaries may incur such liabilities to the extent effective only upon and after Closing), it being understood that such liabilities shall not be taken into consideration for the calculation of any post-Closing adjustment of the Preliminary Consideration or (Y) provide in connection with the Debt Financing any information the disclosure of which is prohibited or restricted under Law or is legally privileged, and (4) Buyer shall be solely responsible for, the preparation of pro forma financial information, any description of all or any component of the Debt Financing, any subsidiary financial statements, any projections or other forward-looking statements relating to the Debt Financing (or components thereof) or any solvency certificate or similar certification or representation;

- (b) Seller shall, and shall cause its Subsidiaries to, supplement the Required Information on a reasonably current basis to the extent that any such Required Information, to the knowledge of Seller, when taken as a whole and in the light of the circumstances under which such statements were made, contains any material misstatement of fact or omits to state any material fact necessary to make such information not materially misleading.
- (c) Seller hereby consents to the reasonable use prior to Closing of all of its and the Business' logos, names and trademarks in connection with the syndication of the Debt Financing; *provided that* such logos, names and trademarks shall be used solely in a manner that is not intended or reasonably likely to harm or disparage Seller or its Subsidiaries or their respective marks, or their respective reputation or goodwill.
- (d) Buyer shall (i) promptly, upon reasonable request by Seller, reimburse Seller and its Affiliates for all reasonable and documented out-of-pocket fees, costs and expenses (including reasonable attorney's fees) incurred by Seller and its Affiliates in connection with the cooperation and assistance contemplated by this Section 5.1.4 (other than with respect to the preparation of the Annual Financial Statements and the Interim Financial Statements), and (ii) indemnify and hold harmless Seller and its Affiliates, and their respective pre-Closing directors, officers, employees, partners, advisors, auditors, agents and representatives, from and against any and all claims, losses, damages, injuries, Liabilities, judgments, awards, penalties, fines, Taxes, costs (including cost of investigation), expenses (including documented out-of-pocket attorneys' fees) or settlement payments suffered or incurred by them in connection with the cooperation and assistance contemplated by this Section 5.1.4, the arrangement of the Debt Financing and any information utilized in connection therewith (other than with respect to the preparation of the Annual Financial Statements and the Interim Financial Statements), except to the extent that any of the foregoing arises from the bad faith or willful misconduct of Seller or its Affiliates, or any of their respective pre-Closing directors, officers, employees, agents and representatives, in each case, acting on behalf of Seller or its Affiliates, as applicable, and any use of the logos of Seller and/or the Business that does not comply with Section 5.1.4(c); *provided, however*, that nothing in this Section 5.1.4(d) shall in any way limit Seller's indemnification obligations under Section 7.1.
- (e) Notwithstanding anything to the contrary in this Agreement, the condition set forth in Section 3.2.3(b), as it applies to Seller's obligation under this Section 5.1.4, shall be deemed satisfied

unless Seller has knowingly and willfully materially breached its obligations under this Section 5.1.4.

#### **5.1.5 Financial Reports**

From the date of this Agreement until Closing, and subject to applicable Laws, Seller will provide Buyer with copies of the monthly summary MFR file (reported not standalone adjusted) relating to the Business (including such business of Seller or its Subsidiaries to the extent carried out in India), in a form and at such times as prepared and shared with Seller management in the Ordinary Course. Seller will use reasonable best efforts to deliver to Buyer (a) on or prior to December 31, 2019, the Annual Financial Statements for fiscal years ending December 31, 2017 and December 31, 2018, and the Interim Financial Statements for the periods ending September 30, 2018 and September 30, 2019, (b) on or prior to March 29, 2020, Annual Financial Statements for the fiscal year ending December 31, 2019, (c) on or prior to May 31, 2020, the Interim Financial Statements for the periods ending March 31, 2019 and March 31, 2020, and (d) for any financial quarter ending after March 31, 2020 and on or prior to Closing, the Interim Financial Statements for each such financial quarter (and for the comparable period of the prior fiscal year) on or prior to the date that is 60 (sixty) days following the end of such financial quarter; *provided, however*, that with respect to the latest financial quarter ending on or prior to the Closing Date, the applicable Annual Financial Statements and Interim Financial Statements shall be provided (i) with respect to the applicable Interim Financial Statements, no later than 60 days after such quarter and (ii) with respect to the applicable Annual Financial Statements, no later than 90 days after the end of the applicable calendar year.

#### **5.1.6 Third Party Consents**

Seller will use reasonable best efforts to promptly obtain all consents, approvals, authorizations of, and to timely provide notice to, all third parties as may be required by any applicable Contract in connection with the consummation of the Transactions.

#### **5.1.7 Access to Information**

From the date of this Agreement until the Closing Date, upon reasonable prior notice, Seller shall, and shall cause its Affiliates to (a) afford to Buyer and its advisors reasonable access, during normal business hours, to the properties, personnel and the information of Seller and its Affiliates to the extent in furtherance of the Transactions and related to the Business, and (b) furnish to Buyer and its advisors additional financial and operating data and other information regarding the Business as Buyer and the Financing Sources may from time to time reasonably request; *provided that* (w) such access shall be subject to Section 5.4.2, (x) no information shall be granted to the extent that it would unreasonably interfere with the conduct of the business of Seller or its Affiliates, (y) Buyer shall bear all of the out-of-pocket costs and expenses (including attorneys' fees) incurred in connection with the foregoing, and (z) Seller shall not be required to provide any information (i) which is subject to a third-party contractual confidentiality obligation and not relevant to the Business, or (ii) the disclosure of which is prohibited or restricted by applicable Law or legal proceeding or that is legally privileged and disclosure of which would be reasonably likely to result in a loss of privilege as determined by Seller in good faith. All requests for data or information pursuant to this Section 5.1.7 shall be made to Seller's general counsel or any Person designated by Seller's general counsel for purposes of providing such access or information and any information so accessed or provided shall be subject to the Confidentiality Agreement.

### 5.1.8 German Property Sale Agreement

Promptly after signing of this Agreement, Seller and Buyer shall procure that German Seller and German Buyer, respectively, execute the asset purchase agreement in the form attached to this Agreement as Annex 5.1.8 concerning the German Property Sale (the **German Property Sale Agreement**) and have the German Property Sale Agreement duly notarized by the applicable Governmental Authority; *provided, however*, that if such agreement requires a purchase price due to applicable Law, Buyer and Seller shall agree to such purchase price prior to Closing

### 5.2 Conduct of Business between Signing and Closing

Except, alternatively, (a) as provided herein or in the SID, (b) as Fairly Disclosed in Section 5.2 of the Disclosure Letter, (c) as required to comply with mandatorily applicable Laws or the terms of a Contract existing as of the date of this Agreement, (d) as contemplated in the most recent budgets of the Company provided to Buyer prior to the date of this Agreement, (e) with prior consent of Buyer (or, if applicable Laws do not so permit, prior consultation with Buyer), or (f) in connection with completing the Separation in accordance with the terms of this Agreement and the Separation Concept, Seller shall use reasonable best efforts to procure that, until Closing, the Business continues to be operated as a going concern, in the Ordinary Course subject to any deviations thereof in connection with the Separation. In particular, Seller shall not, and shall use reasonable best efforts to procure that the Current Group and the Target Group Companies shall not, subject to clauses (a) – (f) of the first sentence of this Section 5.2, from the date of this Agreement through the Closing Date, take any of the actions described in Section 7(b) of Annex 4.1 or: (i) agree to purchase or sell any securities of the Target Group Companies (including shares of capital stock, options, warrants or rights to purchase), including, in each case, by way of merger, (ii) borrow any amount or incur or become subject to any Debt except (A) current Liabilities reflected in the calculation of the Estimates, (B) borrowings under lines of credit existing as of the date of this Agreement or any new lines of credit terminable without penalty at or prior to Closing and (C) any Debt provided by Seller or its Subsidiaries, subject to Section 5.4.13, (iii) guarantee the indebtedness of any third party or release any material claim possessed by Seller, the Current Group or the Target Group Companies with respect to the Business, (iv) materially increase the salary, wages or other compensation rates of any officer, manager or director or consultant, (v) make or grant any material increase in any Employee Benefit Plan or Employee Benefit Arrangement, or amend or terminate any existing Employee Benefit Plan, or adopt any new Employee Benefit Plan, all other than as required by Law or an existing Contract, (vi) make any commitment to incur any Liability to any labor organization, (vii) authorize or make any non-budgeted capital expenditures or commitments in excess of CHF 2,000,000 individually or CHF 20,000,000 in the aggregate per calendar year, (viii) modify or amend, in any material respect, or terminate, release, assign or waive any material rights or claims under any Material Contract or enter into any Contract that would be a Material Contract, (ix) modify or amend, in any material respect, any certificate of incorporation, bylaws or equivalent organizational documents with respect to any Current Subsidiary or any Target Subsidiary, (x) declare or make or pay any dividend in kind or other distribution of profits, payable in kind (which for the avoidance of doubt shall not include the distribution of loans), with respect to the Shares, the Current Subsidiary Shares, the JV Shares or the Target Subsidiary Shares, or (xi) agree to do any of foregoing actions described in clauses (i)-(x). For the purpose of this Section 5.2, reference to "Target Group" or "Target Group Company" shall include the Dedicated JV Subsidiaries.

## 5.3 Tax Covenant and Tax Indemnity

### 5.3.1 Tax Cooperation and Procedures

Without limitation to the generality of Section 5.4.3:

a.

- i. Seller shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns for the Target Group or otherwise relating to the Business that are required to be filed on or prior to the Closing Date. Seller shall timely remit, or cause to be timely remitted, to the applicable Tax Authority all Taxes shown as due and owing on such Tax Returns.
- ii. Seller shall prepare, or cause to be prepared, at Seller's expense, all Tax Returns for the Target Group for any taxable period ending on or prior to the Closing Date (a **Pre-Closing Tax Period**) that are required to be filed after the Closing Date, as well as all Tax Returns for the Target Group for any taxable period commencing on or before, and ending after, the Closing Date (a **Straddle Period**) that report any Separation Transaction (including carve-in and carve-out transactions) and that are required to be filed after the Closing Date (such Tax Returns for the Pre-Closing Tax Period and the Straddle Period, **Seller Post-Closing Returns**), and Buyer shall prepare, or cause to be prepared, all Tax Returns for the Target Group for any Straddle Period that are not Seller Post-Closing Returns (such Tax Returns for the Straddle Period, **Buyer Post-Closing Returns** and, together with Seller Post-Closings Returns, **Post-Closing Returns**). Seller and Buyer shall each bear half of the costs and expenses of preparing all Tax Returns and allocation of Taxes to be prepared by Seller or Buyer for a Straddle Period in accordance and compliance with this Section 5.3.1(a)(ii) and Section 5.3.1(b); *provided, however, that* (a) in the case of preparing any such allocation of Taxes, Buyer shall bear half of only reasonable out-of-pocket third party costs and expenses and (b) Seller shall solely bear the costs and expenses with respect the Separation Valuations and any related Tax rulings. Annex 5.3.1(a)(ii) sets forth a list of Tax Returns that, as of the date hereof, Seller reasonably expects to constitute a Seller Post-Closing Return or a Buyer Post-Closing Return, and Seller, in consultation with Buyer, shall revise Annex 5.3.1(a)(ii) prior to the Closing Date.
- iii. All Tax Returns prepared pursuant to Section 5.3.1(a) shall be prepared in a manner consistent with past custom and practice, except as otherwise required by Law or this Agreement. Buyer and Seller shall cooperate, as and to the extent reasonably requested, with each other and use their reasonable best efforts to obtain from any Governmental Authority and any other third party all necessary information as well as all confirmations, certificates, acknowledgements and similar documents for the filing of the Post-Closing Returns.
- iv. The Party that controls the preparation of any Post-Closing Return pursuant to Section 5.3.1(a)(ii) (the **Preparing Party**) shall submit to the other Party (the **Reviewing Party**)

a draft of any such Tax Return, in the case of an income Tax Return, at least 60 (sixty) days and, in the case of a non-income Tax Return, at least 30 (thirty) days prior to the due date (taking into account applicable automatic extensions and extensions validly obtained as of such time (the **Due Date**)) for such Tax Return (or, in each case, such shorter period of time as the Due Date for any such Tax Return may reasonably require), and the Parties shall cooperate in good faith to resolve any disputes with respect to, and finalize, any such Tax Return; *provided, however*, if the Parties are not able to resolve any item that is not a Material Tax Item, then such item shall be reported on the applicable Tax Return in the manner determined by the Preparing Party; *provided, further, however*, if the Parties are not able to resolve any Material Tax Item, then, in the case of an income Tax Return, 30 (thirty) days and, in the case of a non-income Tax Return, 15 (fifteen) days prior to the Due Date for such Tax Return, the Parties shall submit such Tax Return to the Accounting Firm (or, if the Accounting Firm is not available or otherwise unwilling or unable to resolve the dispute, another internationally recognized independent public accounting firm mutually agreeable to the Parties) (the **Tax Referee**) for resolution of any such Material Tax Item and the Parties shall instruct the Tax Referee to render its final determination prior to the Due Date for such Tax Return or as soon as reasonably practicable thereafter. For purposes of this Agreement, a **Material Tax Item** is any item of income, gain, loss, deduction or credit for applicable Tax purposes (excluding, for the avoidance of doubt, determination of valuations to be utilized to report Separation Transactions, which valuation issues are governed by Section 5.3.1(a)(v)) that, if reported in the manner determined by Seller, could reasonably be expected to result in USD 250,000 or more of Taxes that are not Indemnified Taxes or, if reported in the manner determined by Buyer, could reasonably be expected to result in at least USD 250,000 or more of Indemnified Taxes.

- v. With respect to any Seller Post-Closing Return for a Target Group Company that reports any Separation Transaction, for purposes of reporting the Tax consequences of such Separation Transaction to such Target Group Company, the Parties shall use the applicable Material Separation Valuations (subject to Section 2.7.3(b)) or, if a valuation for the Target Group Company is not set forth on Annex 2.7.3(b), the valuation determined by Seller (together with the Material Separation Valuations, the **Separation Valuations**). For the avoidance of doubt, the Separation Valuations shall be utilized to establish, in the case of a carve-in Separation Transaction, the applicable Target Company's initial Tax basis in the assets acquired in such Separation Transaction and, in the case of a carve-out Separation Transaction, the capital gains or losses resulting from such Separation Transactions.
- vi. Buyer shall file or cause to be filed all Post-Closing Returns as finally prepared pursuant to Section 5.3.1; *provided that*, with respect to any Post-Closing Return that is submitted to the Tax Referee pursuant to Section 5.3.1(a)(iv), if the Tax Referee has not rendered its final determination by the Due Date for any such Tax Return, then Buyer shall be entitled to file any such Tax Return in the manner determined by Buyer, and upon receipt of the Tax Referee's final determination, Buyer shall amend any such Tax Return to reflect such final determination.

- vii. In the case of Post-Closing Returns, Seller shall, on a quarterly basis, calculate and remit to Buyer an amount equal to any Taxes to be indemnified in accordance with Section 5.3.2(a) (i) that the Seller reasonably expects to become due and owing in the form of a prepayment in the following quarter or (ii) that is shown as due and owing on the respective Tax Return after deduction of any prepayments made pursuant to clause (i) of this Section 5.3.1(a)(vii). To the extent the amount of Taxes to be indemnified in accordance with Section 5.3.2(a) shown as due and owing on any such Tax Return as filed with the applicable Tax Authority is lower than the amount paid pursuant to clause (i) of this Section 5.3.1(a)(vii), any such difference shall be applied against, and reduce, future payments pursuant to this Section 5.3.1(a)(vii) and ultimately refunded if not used. *Provided*, that, if any such Tax Return is submitted to the Tax Referee pursuant to Section 5.3.1(a) and the Tax Referee has not rendered its final determination prior to the Due Date for such Tax Return, then, solely for purposes of calculating the amount to be remitted by Seller to Buyer pursuant to this Section 5.3.1(a)(vii), the item submitted to the Tax Referee for resolution shall be deemed to be resolved in the manner determined by Seller.
  - viii. In making its determination, the Tax Referee shall serve as an expert, and not as an arbitrator, and any determination by a Tax Referee pursuant to Section 5.1.3(a) shall be final and binding on the Parties, and the fees, costs, and other expenses of the Tax Referee shall be borne equally by Buyer and Seller.
- b. For purposes of this Agreement, in the case of any Straddle Period, Taxes shall be allocated to the portion of the Straddle Period ending on the Closing Date as follows: (i) in the case of property taxes (real, personal, or otherwise) and other similar ad valorem Taxes, based upon a fraction the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date and the denominator of which is the total number of days in the Straddle Period; and (ii) in the case of any other Taxes (including income, payroll, employment, sales, value added, and withholding Taxes) based on an interim closing of the books basis as if such Tax period ended as of the close of business on the Closing Date; *provided that* exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period beginning after the Closing Date in proportion to the number of days in each period.
- c. Announcement 7 Filing:
- i. Promptly after the date hereof (and in any event within 30 days) Seller shall file, in the joint names of Seller and Buyer (if Buyer so elects) and at Seller's own expense, the Announcement 7 Reporting Package, to the applicable Governmental Authority in accordance with applicable Law. Seller shall submit a draft of the Announcement 7 Reporting Package to Buyer for review and comment not less than 10 days prior to the date such filing is to be made, and Seller shall incorporate into the Announcement 7 Reporting Package all reasonable comments made by Buyer. Within five days after the submission of Announcement 7 Reporting Package, Seller shall deliver to Buyer a complete copy of the as-filed Announcement 7 Reporting Package and, if available

within such time period, an acknowledgement of receipt issued by the applicable Governmental Authority.

- ii. Seller shall keep Buyer informed with respect to the commencement, status and nature of any communications with any applicable Governmental Authority with respect to the Announcement 7 Reporting Package (including by providing to Buyer copies of all material correspondence, reports and filings).
  - iii. If Seller is required to pay any Tax relating to the filing of the Announcement 7 Reporting Package or otherwise imposed by the applicable People's Republic of China Governmental Authority in connection with the Transactions, Seller shall file, or cause to be filed, appropriate Tax Return(s) and pay such Tax in accordance with applicable Tax Law. Seller shall deliver to Buyer copies of (A) such Tax Return(s) (where applicable) and (B) the receipt of Tax payment within ten days after receiving the Tax payment receipt. If the applicable Governmental Authority determines that no Tax is payable by Seller as a result of filing the Announcement 7 Reporting Package, Seller shall inform, and provide reasonable evidence of such determination to Buyer within ten days after receipt thereof.
- d. Buyer may, in its sole discretion, make one or more elections pursuant to Section 338(g) of the US Code (and any analogous election under applicable US state or local Law) with respect to the purchase of the Shares (including, as applicable, with respect to any Subsidiary of the Company, but excluding, for the avoidance of doubt, the US Target as it is not a Subsidiary of the Company), (each, a **Section 338(g) Election**). In the event that Buyer determines to make a Section 338(g) Election, Buyer will prepare an allocation of the Preliminary Consideration (less an amount equal to the sum of the Fixed Loan Consideration, the US Purchase Price, the Peru Purchase Price, and the portion of the Preliminary Consideration allocable to the German Property Sale) and any other relevant amounts treated as consideration for US federal income (and other applicable) tax purposes among the assets of the Company (and, as applicable, any Subsidiary of the Company), in accordance with Sections 338 and 1060 of the US Code and the Treasury Regulations thereunder, which may be adjusted from time to time by Buyer. Buyer will provide a copy of any such allocation to Seller.
- e. With the exception of Section 5.3.1(f), Buyer shall notify Seller without undue delay, but at latest within 45 (forty-five) Business Days, of Buyer's (or an Affiliate's) receipt of written notice of any Tax Audit of a Target Group Company received from a Tax Authority for a Pre-Closing Tax Period or a Straddle Period. The failure to give notice in accordance with this Section 5.3.1(e) shall not exclude Seller's liability hereunder (*Verwirkung*); *provided, however*, that Seller shall not be liable for any Losses if and to the extent the same is caused by Buyer's failure to give timely notice within the time period set forth in this Section 5.3.1(e). Buyer shall provide Seller promptly with copies of any notices or other material correspondence provided by the Tax Authority in connection therewith solely to the extent relating to a Pre-Closing Tax Period or the portion of a Straddle Period ending on the Closing Date. In the case of such a Tax Audit for a Pre-Closing Tax Period or a Straddle Period, Buyer and Seller shall cooperate on a reasonable basis in the Tax Audit process and Seller may participate on a reasonable basis at Seller's own expense in the dealings with the respective Tax Authority. Seller shall be entitled to appoint an

auditor and/or a tax advisor at Seller's own expense to participate in the Tax Audit who shall exercise Seller's rights provided in this Section 5.3.1(e) in connection therewith. Buyer shall not enter into any binding acknowledgement or settlement in any Tax Audit relating to a Pre-Closing Tax Period or the portion of a Straddle Period ending on the Closing Date without the prior written consent of Seller, such consent not to be unreasonably withheld.

- f. Buyer shall notify Seller without undue delay, but at latest within 10 (ten) Business Days after any of the Target Group Companies has received a written notice of any Tax assessment or following decision by the Tax Authority or a court for a Pre-Closing Tax Period that could reasonably be expected to result in an indemnity obligation of Seller for Indemnified Taxes under this Agreement. The failure to give notice in accordance with this Section 5.3.1(f) shall not exclude Seller's liability hereunder (*Verwirkung*); *provided, however*, that Seller shall not be liable for any Losses if and to the extent the same is caused by Buyer's failure to give timely notice within the time period set forth in this Section 5.3.1(f).
- g. Seller shall, with notice to Buyer, have the right to request, at Seller's own expense, the filing of appeals by Seller against the assessment of Taxes or any court decisions which result from any such Tax Audit for a Pre-Closing Tax Period, unless any such appeal could reasonably be expected to result in Taxes other than Indemnified Taxes. In the event that Seller elects to exercise such right, Buyer shall grant any necessary powers of attorney and make available to Seller or cause to be made available all relevant documentation reasonably necessary for the filing of such appeals. Seller shall provide Buyer promptly with copies of any notices or other material correspondence provided by the Tax Authority in connection therewith, Buyer may participate on a reasonable basis in the dealings with the respective Tax Authority, and Buyer shall be entitled to appoint an auditor and/or a tax advisor to participate in the Tax Audit who shall exercise Buyer's rights provided in this Section 5.3.1(g) in connection therewith. Seller shall not enter into any binding acknowledgement or settlement in any such procedure before the Tax Authorities or a court, without the prior written consent of the Buyer, such consent not to be unreasonably withheld.
- h. Each Party agrees to retain all of its books with respect to Taxes relating to any taxable period beginning before Closing until the expiry of the statute of limitations (and any extensions thereof) for any such taxable period, and to abide by, and comply with, all record retention Contracts entered into with any Tax Authority.
- i. This Section 5.3.1, and not Section 7.1.5, shall control with respect to Tax Audits for Pre-Closing Tax Periods and Straddle Periods.
- j. The Parties acknowledge and agree that the purchase and sale of the equity interests in US Target is intended to be treated as a taxable purchase and sale of the assets of US Target for US federal (and applicable US state and local) income tax purpose, and the Parties will not, and will cause their Affiliates not to, take any position inconsistent with such intended tax treatment on any Tax Return, in any Tax Audit or otherwise before any Tax Authority unless otherwise required by a determination within the meaning of Section 1313 of the US Code.
- k.



### 5.3.2 Tax Indemnities and Tax Refunds

- a. Subject to Section 8.2(b), (c) and (d), but without limiting the generality of Section 7, Seller shall indemnify and hold harmless the Indemnified Parties from and against any and all Losses arising out of or resulting from, directly or indirectly: (i) Taxes (A) of any Target Group Company (including, for the avoidance of doubt, US Target) or with respect to the German Real Property, the Peruvian Business or otherwise with respect to the Business for any Pre-Closing Tax Period and the portion of any Straddle Period ending on the Closing Date, (B) of any member of an affiliated, consolidated, combined, unitary, fiscal unity, VAT or other similar Tax group of which any Target Group Company (or any predecessor of any of the foregoing) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar US state or local, or non-US Law, (C) of any person (other than any Target Group Company) imposed on a Target Group Company as a transferee or successor, by contract or pursuant to any Law, which Taxes relate to an event or transaction occurring before Closing, (D) of Seller or any Excluded Subsidiary or with respect to any Excluded Asset for any Tax period, or (E) arising out of the Separation or any Separation Transaction; (ii) Taxes imposed under Announcement 7 or any other direct or indirect capital gains Taxes imposed or arising in connection with the Transactions, including any Taxes imposed on Buyer or any Affiliate of Buyer as a method of collecting such Taxes; or (iii) any reasonable third-party costs and expenses incurred by Buyer or any of its Affiliates, including the Target Group Companies in settling, defending, mitigating and/or rejecting a claim that would give rise to a claim by Buyer against Seller in accordance with items (i), (ii) or (iii) of this Section 5.3.2(a) (collectively, **Indemnified Taxes**), *provided, however*, that no indemnity shall be provided for any Indemnified Taxes, to the extent that such Taxes (u) are reflected as a liability in Net Debt or Net Working Capital in the Final Completion Accounts, (v) would not have arisen but for the breach by Buyer of the covenants contained in Section 2.7.3 above on the use of the US Valuation, the Asset Allocation, and the Separation Valuations, or (w) result from the failure after Closing of any Target Group Company to comply with any Blocking Periods or Tax arrangements (including binding Tax rulings), in each case, that are specifically disclosed in Annex 5.3.2(a); (x) are attributable to any amended Tax Return filed by a Target Group Company after the Closing Date for a Pre-Closing Tax Period or a Straddle Period without the prior written consent of Seller, such consent not to be unreasonably withheld, (y) in the case of a Straddle Period, are directly attributable to any change in the accounting policies or practices of a Target Company made after the Closing Date, including any change of any accounting treatment of the Separation after the Closing Date, in particular with respect to the valuation of assets or the allocation of values; or (z) are US federal (or US state and local) income Taxes attributable to any Section 338(g) Election or other Taxes attributable to any other Tax elections for a Pre-Closing Tax Period made after the Closing Date by a Target Group Company outside the Ordinary Course of the Target Group except as otherwise required by applicable Law or as required or permitted by this Agreement.
- b. Buyer shall indemnify and hold harmless Seller from and against, and shall pay to Seller any amount equal to, any Taxes which Seller and/or any of its Affiliates is required to pay to the extent such Taxes are a result of (i) the failure after Closing of any Target Group Company to comply with any Blocking Periods or Tax arrangements (including binding Tax rulings) that are specifically disclosed in Annex 5.3.2(a), (ii) the breach by Buyer of the covenants contained in

Section 2.7.3 above on the use of the US Valuation, the Asset Allocation and the Separation Valuations (iii) any Section 338(g) Election (limited in the case of this clause (iii) to US federal income Taxes), or (iv) any other Tax elections for a Pre-Closing Tax Period made after the Closing Date by a Target Group Company outside the Ordinary Course of the Target Group except as otherwise required by applicable Law or as required or permitted by this Agreement.

- c. Buyer shall pay to Seller within 10 (ten) Business Days after receipt of any Tax refund (or credit in lieu thereof) realized or received in cash (*i.e.*, by way of receipt of a payment or by way of a reduction of a Tax that otherwise would have become payable) by any Target Group Company after the Closing Date (i) relating to any Target Group Company for any Pre-Closing Tax Period and the portion of any Straddle Period ending on the Closing Date, or (ii) attributable to an amount paid by Seller pursuant to Section 5.3.2(a) above (a **Tax Refund**); *provided, however*, that no Tax Refund shall be provided pursuant to this Agreement (x) for any Taxes that are reflected (as receivable or asset) in the Final Completion Accounts in Net Working Capital or Net Debt, (y) that is attributable to the carryback of a loss, credit, or other Tax attribute generated in a Tax period (or portion thereof) beginning after the Closing Date or (z) that is required to be paid over to another person (other than a Target Group Company) pursuant to a legally binding commitment in effect on the Closing Date. Buyer shall provide a notice to Seller as soon as reasonably practicable upon receipt of any such Tax Refund. Seller may, within 30 (thirty) days of receiving such notice, request from Buyer a certification by the respective Target Group Company's auditor (at the expense of Seller) detailing the amount of such Tax Refund. Any Tax Refund paid to Seller pursuant to this Section 5.3.2(c) shall be paid without interest (other than interest received from the applicable Tax Authority in connection with such Tax Refund) and net of all out-of-pocket costs and expense (including Taxes) incurred by Buyer and its Affiliates in obtaining or receiving such Tax Refund. In the event that any Tax Refund paid over to Seller is subsequently disallowed in whole or in part, then Seller shall pay or cause to be paid to Buyer (or, at Buyer's direction, a Target Group Company designated by Buyer) such Tax Refund (or portion thereof) that was disallowed. Buyer shall, at Seller's sole cost and expense, cooperate with Seller, as and to the extent reasonably requested by Seller, to obtain any Tax Refunds to be paid to Seller in accordance with this Section 5.3.2(c), including, without limitation, to apply for all relevant Tax rulings and confirmations and file any requests for refund. Subject to the limitations in Section 5.4.4, Buyer shall provide upon request of Seller any information relevant for Seller to determine whether there is, has been or should have been any Tax Refund. If any dispute arises as to whether there is, has been or should have any Tax Refund or as to the amount thereof, then the Parties shall cooperate in good faith to resolve any such dispute for a period of 30 (thirty) days; *provided, however*, if the Parties are not able to resolve fully any such dispute within such 30-day period, then such dispute shall be referred for determination to a third party expert as agreed by Buyer and Seller in good faith (the **Expert**), who in making such determination shall act as expert and not arbitrator and whose decision shall, in the absence of manifest error, be final and binding on Buyer and Seller. The Expert may make such enquiries as he shall think fit in order to make such determination and shall also determine how the costs of obtaining his opinion should be paid and borne by the Parties, taking into account the reasonableness of their respective arguments;
- d. Buyer shall pay or cause to be paid to Seller an amount equal to any reduction in income Taxes payable by any Target Group Company in the portion of any Straddle Period beginning after the

Closing Date or in any of the five immediately succeeding taxable periods to the extent attributable to the utilization in such taxable period (or portion thereof) of any net operating loss carryforward generated in a taxable period (or portion thereof) ending on or prior to Closing, determined on a "with and without" basis. Any payment due under this Section 5.3.2(d) shall be calculated based on, and paid by Buyer to Seller within 30 days of the filing of, the as-filed annual income Tax Return for the applicable Target Company reflecting such reduction in cash Taxes payable.

- e. Any Tax rulings or other similar agreements or arrangements with respect to Taxes that were issued to a Target Company or which a Target Company is party to or bound by shall be included in the books and records of such Target Company.
- f. Within 5 (five) Business Days of receiving each CH80 Tax Ruling (as defined in Annex 5.3.2(a)), Seller shall deliver to Buyer a copy of all excerpts of the CH80 Tax Rulings that are relevant to the Company and the other Target Group Companies or could otherwise affect Buyer's ability to restructure the Company and its Subsidiaries after the Closing. With respect to each CH80 Tax Ruling, in the event that Seller, the Company or any Affiliate thereof receives any notice or other communication from the applicable Tax Authority prior to final issuance of such CH80 Tax Rulings, and such notice or other communication relates to a portion of such CH80 Tax Ruling that could reasonably be expected to affect the Company or any other Target Company or otherwise affect Buyer's ability to restructure the Company and its Subsidiaries after Closing, then (i) Seller shall notify Buyer as soon as reasonably practicable and provide Buyer with a copy of any such notice or other communication and (ii) Seller shall incorporate into the preparation of any response to such notice or other communication all reasonable comments made by Buyer.

## **5.4 Other Covenants**

### **5.4.1 Public Announcements**

Buyer and Seller shall not, and shall cause their respective Affiliates and representatives to not, without the approval of the other, make any press release or other public announcement concerning the Transactions, except as and to the extent that any such Party shall be so obligated by Law, in which case the other Party shall be advised and the Parties shall use their reasonable best efforts to cause a mutually agreeable release or announcement to be issued; *provided, however*, that the foregoing shall not preclude communications or disclosures (a) necessary to comply with accounting or SEC disclosure obligations or the rules of any stock exchange, or (b) with public stockholders or analysts in the Ordinary Course for transactions of the type contemplated by this Agreement.

### **5.4.2 Confidentiality**

- a. Subject to Section 5.4.1, each Party undertakes to keep, and shall procure that its employees, representatives, and advisors keep, in strict confidence the existence and content of this Agreement, the Ancillary Agreements, the Transactions, all information and documents received from the other Party or any of its Affiliates including in particular, without limitation, any information and documents relating to the Business or the Excluded Businesses; except to the

extent that (i) disclosure is required by applicable Law (*provided that* such disclosing Party notifies the other Party in advance of such disclosure and uses its reasonable best efforts to maintain confidential treatment of the information), (ii) disclosure is necessary in a proceeding brought by a Party in pursuit of its rights hereunder, or (iii) such information becomes known to the public without any fault of, or breach of any confidentiality undertaking by, the disclosing Party. This confidentiality obligation shall continue to be in effect after termination of this Agreement.

- b. In the event this Agreement is terminated, upon the request of the other Party, each Party will, and will cause its Affiliates and their respective employees, representatives and advisors to, promptly return or cause to be returned all copies of documents and information, including the Disclosure Documents any documents and information furnished by the other Party in connection with this Agreement or the Transactions.
- c. Notwithstanding any provision of the Confidentiality Agreement, the Confidentiality Agreement shall automatically terminate and be superseded by this Agreement with effect from the date of this Agreement.

#### **5.4.3 Duty to Cooperate**

The Parties shall, and shall procure that their respective Affiliates will, cooperate in good faith with respect to reasonable requests made by the other Party regarding this Agreement, any proceeding, Tax Return or other Tax filing, Tax Refund, Tax Audit or the preparation of financial statements.

#### **5.4.4 Document Retention and Access**

Seller and Buyer agree that they shall keep and cause the Excluded Subsidiaries and the Target Group Companies, respectively, to keep all books and records of the Target Group Companies and the Excluded Subsidiaries (in the case of the Excluded Subsidiaries only such books and records related to the Business) and existing as per Closing (other than Tax records, the retention of which shall be governed by Section 5.3.1(h)) for the longer of 10 (ten) years and the period required by applicable Laws. During such period and without limitation to the generality of Section 5.4.3, each of the Parties shall, and shall procure that, as applicable, the Target Group Companies and the Excluded Subsidiaries shall, grant the other Party and its advisors access, during normal business hours and upon reasonable notice, to such books and records, and making employees available (to the extent not unreasonably interfering with their respective ongoing operations) on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, to the extent necessary or relevant in connection with any proceeding, Tax Return or other Tax filing, Tax Audit, preparation of financial statements, inquiry or dispute arising out of or in connection with this Agreement, any Ancillary Agreement or as otherwise reasonably requested by the Party (including to the extent necessary to remove Excluded Assets from Buyer's or its Affiliates' premises, in connection with any claims relating to Excluded Liabilities, regulatory reporting obligations, etc. and to SAP modules, ticketing systems and other applications in connection with GBS, operations SOPs and work instruction relating to the execution of global business services (**GBS**) transaction processes using Seller's systems in connection with GBS and ticketing systems to the extent reasonably necessary for Buyer to transition the Business and the Target Group off of Seller's GBS model); *provided that* (a) such access shall be subject to Section 5.4.2, (b) no access shall be granted to

the extent that it would unreasonably interfere with the conduct of the business of the party granting access, (c) the Party requesting access shall bear all of the out-of-pocket costs and expenses (including attorneys' fees) incurred in connection with the foregoing, and (d) such access shall not require either Party to provide any information the disclosure of which is prohibited or restricted by applicable Law or legal proceeding or that is legally privileged and disclosure of which would be reasonably likely to result in a loss of privilege as determined by such Party in good faith, and (e) in case of the Buyer requesting access, such access shall only be granted with respect to matters to the extent related to the Business.

#### **5.4.5 No Claims against Directors and Officers**

- a. Buyer shall procure that, as soon as practicable and in any event within 45 (forty-five) Business Days following Closing, each Target Group Company (i) removes its respective directors and officers, to the extent they do not pertain to the Business after Separation, and (ii) grants unconditional discharge to its respective directors and officers for their conduct of business in the period up to and including Closing.
- b. Without prejudice to any rights of Buyer under this Agreement, Buyer shall not, and shall procure that the Target Group Companies will not, make any claim (to the extent not based on fraud or intentional misconduct) (i) against any directors or officers of Seller or the Target Group Companies in connection with their mandate(s) or activities for Seller or the Target Group Companies (as applicable) in the period up to and including Closing or in connection with the Transactions; (ii) against any of Seller's Affiliates in connection with their acts or omissions as the Target Group Companies' Affiliates in the period up to and including Closing or in connection with the Transactions; or (iii) without prejudice to Buyer's right to bring a claim against Seller under this Agreement, against Seller in connection with Seller's position as direct or indirect shareholder of any of the Target Group Companies.

#### **5.4.6 Permits and Licenses**

- a. To the extent permitted by applicable Laws and regulations, prior to Closing and to the extent reasonably necessary or appropriate, Seller and its Affiliates will use reasonable best efforts to assist Buyer in obtaining (whether by transfer to Buyer, by new issuance by a Governmental Authority to Buyer, or otherwise) any Permit necessary or advisable to continue the operation of the Business after the Closing in the Ordinary Course (if any), including directing its employees to cooperate with such efforts and making any notifications required to be sent by Seller or any of its Affiliates.
- b. To the extent that applicable Laws and regulations require Buyer or any Target Group Company to take actions, measures or steps in respect of any Permit in order to have the benefit of such Permit (including, if necessary, by procuring the replacement of such Permit with a new Permit of the same type) at or after Closing (each such action, measure or step a **Permit Completion Action**) (if any), for a period of 12 (twelve) months following the Closing Date, Seller shall provide commercially reasonable assistance to Buyer or any Target Group Company as reasonably requested by Buyer to perform any required Permit Completion Action in accordance with applicable Laws and regulations at Buyer's sole cost and expense.

#### **5.4.7 Re-Naming of Target Group Companies and Post-Closing Use of Clariant Trademarks and Company Names**

- a. To the extent applicable, Buyer shall, and shall procure that its Affiliates will use reasonable best efforts, as soon as practicable after Closing, but in any case not later than within the 12 months following the Closing Date, to re-name the Target Group Companies and the Dedicated JV Subsidiaries in such way that their company names as identified in Annex B will no longer include any "Clariant" designations or names, or any derivatives or components thereof, or any confusingly similar designations.
- b. To the extent required, the Target Group Companies and the Dedicated JV Subsidiaries may continue to use the designation or logo "Clariant" or any derivatives or components thereof in e-mail addresses, domain names, business cards, letterheads or other business documents, existing marketing materials and brochures and existing Inventory, products and raw materials already labelled, irrespective of whether used online or offline, for a transitional period of up to 3 (three) months following the Closing Date. Upon expiration of such period, the relevant Target Group Companies and Dedicated JV Subsidiaries shall cease and desist using the designation, name and logo "Clariant" or any derivatives or components thereof or any confusingly similar designations, names or logos for any of the foregoing purposes, *provided that* the Target Group Companies and the Dedicated JV Subsidiaries shall be permitted to use the designation "Clariant" or any derivatives or components thereof for the sole purpose of identifying and/or referring to any relevant Target Group Company and Dedicated JV Subsidiary by its company name as identified in Annex B to the extent its respective re-naming pursuant to Section 5.4.7(a) has not yet been effected.
- c. Subject to the terms of this Agreement, Seller shall have no responsibility for claims by a third party arising out of the use of any "Clariant" company name, designations or logos (or derivatives or components thereof) by Buyer and its Affiliates after the Closing Date. Notwithstanding anything to the contrary in this Agreement, (i) to the extent the use of items listed in Section 5.4.7(b) is permitted hereunder in the context of conducting business, the personnel of Buyer or its Affiliates will not, and will have no authority to, hold themselves out as officers, employees or agents of the Seller or its Affiliates and (ii) none of Buyer or its Affiliates shall have any responsibility for claims arising out of the use of any "Clariant" company name, designations or logos (or derivatives or components thereof) by Seller or its Affiliates after the Closing Date.
- d. Buyer shall, and shall procure that the relevant Target Group Companies will, use reasonable best efforts to perform as soon as practicable after the Closing Date, and in any event such time period as may be required under any applicable local Law to perform, all notifications, filings and other actions required to comply with the obligations set forth in this Section 5.4.7.

#### **5.4.8 Removal of Authorized Signatories**

Seller shall take all necessary actions to remove any directors, officers, authorized signatories or employees of the Target Group Companies that are not part of or related to the Business after the

Separation from any (internal or public) registers (such as commercial registers, company house or equivalent registers) at or prior to the Closing Date.

#### 5.4.9 Non-Competition and Non-Solicitation

- a. During the Restricted Period Seller shall not, and shall ensure that its Subsidiaries will not:
  - i. conduct or engage in any Restricted Business;
  - ii. acquire in whole or in part any business that conducts or engages in any Restricted Business; or
  - iii. solicit, hire or otherwise engage any employees of the Company or of one of the Company's Subsidiaries (collectively, the **Restricted Employees**; *provided that* the restrictions in this Section 5.4.9(a)(iii) shall not apply to the hiring or engagement of any Restricted Employee if such Restricted Employee (x) responds to a *bona fide* general recruitment advertisement that was not specifically targeting any Restricted Employee, or (y) is under notice of termination of its employment as of the date of this Agreement, or (z) has been given notice of termination by his or her employer.
- b. Nothing in this Section 5.4.9 shall prevent Seller and/or any of its Affiliates from (in each case, in good faith):
  - i. acquiring, or owning an investment of less than 10% of the issued and outstanding securities or interests convertible into securities in a Business that is engaged in Restricted Business;
  - ii. acquiring or owning an investment in a business that is engaged in Restricted Business, provided that the revenues of such Restricted Business do not exceed 10% of the overall revenues of such acquired or owned business; or
  - iii. conducting any business as conducted by Seller or any of its Subsidiaries, other than the Business sold pursuant to this Agreement, on or prior to the Closing Date.
- c. This Section 5.4.9 shall not apply to any Person that directly or indirectly acquires Seller or any of its Affiliates.
- d. If any court determines that any of the provisions of this Section 5.4.9 is excessive in duration or scope or is unreasonable or unenforceable under applicable Law, it is the intention of the Parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the Laws of that jurisdiction.

#### 5.4.10 Notices of Certain Events

In addition to the notice required under Section 6.3, prior to Closing, each Party shall inform the other Party promptly of (a) any written notice or other written communication from any Person alleging that the

consent of such Person is or may be required in connection with the Transactions and (b) any material written communication from any Governmental Authority in connection with the Transactions.

#### 5.4.11 Insurance

Seller shall keep the Insurance Policies, or suitable replacements therefor substantially on the same terms as in effect as of the date of this Agreement, in full force and effect through Closing. Buyer acknowledges and agrees that, from and after the Closing Date, the Business and the Target Group shall cease to be insured by, have access or availability to, be entitled to make claims on, be entitled to claim benefits from or seek coverage under any of Seller's insurance policies (including, for the avoidance of doubt, any self-insured program or captive insurance provider), and Buyer shall be solely responsible for all insurance coverage and related risk of loss after the Closing Date with respect to the Business, the Target Group and the Business Employees. Notwithstanding the foregoing, with respect to events or circumstances relating to the Business, the Target Group Companies or the Business Employees arising prior to Closing that are covered by Seller's or its Affiliates' (excluding the Target Group) occurrence-based insurance policies (such insurance policies, the **Seller Insurance**), after the Closing Date, Buyer and the Target Group Companies may, and Seller shall or shall cause its Affiliates to use its reasonable best efforts to make claims under the Seller Insurance to the extent such coverage and limits are available to Seller, the Target Group or otherwise in respect of the Business, the Target Group or the Business Employees under the Seller Insurance. In the event any insurer under any Seller Insurance denies or refuses to acknowledge coverage with respect to any such claim, Seller shall reasonably cooperate with efforts of Buyer to pursue such coverage, at Buyer's sole cost and expense.

#### 5.4.12 Post-Closing Sale and Transfer of Minority Shareholdings

- a. Promptly after Closing, Seller and Buyer shall procure, at Seller's sole cost and expense, that EBITO Chemieeteiligungen AG and an Affiliate of Buyer designated by Buyer, respectively, enter into a sale and transfer agreement regarding the sale and transfer of 6 (six) shares in P.T. Clariant Plastics & Coatings Indonesia by EBITO Chemieeteiligungen AG to such Affiliate of Buyer at a purchase price of USD 10, substantially in the form attached hereto as Annex 5.4.12(a).
- b. As soon as practicable after Closing, Seller and Buyer shall procure, at Seller's sole cost and expense, that each of Daniel Hug and Andreas Walti (the **Pakistan Sellers**) on one hand and the directors of Clariant Chemical Pakistan (Private) Limited (**Pakistan Target**) to be appointed by Buyer as soon as practicable after Closing on the other hand enter into a sale and transfer agreement regarding the sale and transfer of the respective 1 (one) share held by each of the Pakistan Sellers to such newly appointed directors at a purchase price of PKR 10, substantially in the form attached hereto as Annex 5.4.12(b).

#### 5.4.13 Intergroup Transactions

- (a) Prior to Closing, the Target Group Companies shall use reasonable best efforts to repay in full any outstanding intergroup loans (excluding for the avoidance of doubt, the Shareholder Loans and any loans between Target Group Companies) and to terminate and settle (i) any cash pool arrangements such intergroup loans are part of, and (ii) all Affiliate Transactions (other than the



Ancillary Agreements, the Post-Separation Agreements, the Shareholder Loans or any Affiliate Transaction that is not an intergroup loan to the extent reflected in the Completion Accounts). If such outstanding intergroup loan is not repaid prior to Closing, it shall be reflected in the Completion Accounts.

- (b) Prior to Closing, in accordance with the terms of this Agreement, the Separation Concept and the SID, Seller may enter into, modify or amend any Shareholder Loan; provided that no later than 5 (five) Business Days prior to the anticipated Closing Date Seller shall deliver to Buyer an update to Annex C to reflect each Shareholder Loan and the principal amount outstanding under each Shareholder Loan as of the Closing Date, together with interest accrued thereon and any other information related thereto (including copies of each such Shareholder Loan) as may be reasonably requested by Buyer.

#### **5.4.14 Employee Protections**

From and after the Closing until December 31, 2020, Buyer shall use reasonable best efforts, unless otherwise expressly permitted by this Agreement, to provide the Transferred SU Employees who remain actively employed with the Target Group Companies after the Closing with:

- (a) compensation and benefits (including insurance coverage) that are substantially similar in the aggregate or more favorable when compared to the terms to which they were entitled immediately prior to Closing;
- (b) their full service with Seller and its Affiliates (as applicable) recognized for the purposes of benefit eligibility (including vacation benefit and service awards) and vesting in relation to all forms of variable compensation and severance pay calculations; and
- (c) benefit from a waiver of any benefit plan restrictions relating to pre-existing medical conditions in respect of applicable Employee Benefit Plans operated by Buyer or its Affiliates.

Notwithstanding any provision of this Section 5.4.14 or Sections 5.4.17 and 5.4.18 to the contrary, no provision in this Agreement shall (i) create any third-party beneficiary or other rights in any employee (including any beneficiary or dependent thereof) of Seller, the Business, the Target Group, or Buyer or in any other Person other than the Parties hereto and their respective successors and permitted assigns, (ii) constitute or create an employment agreement, or (iii) constitute or be deemed to constitute an amendment to any Employee Benefit Plan or any other benefit or compensation policy, plan, or arrangement sponsored or maintained by Buyer or its Affiliates.

#### **5.4.15 Consultation**

Prior to Closing, Seller will take all actions necessary to ensure that the representation set forth in Section 13(f) of Annex 4.1 is true and correct in all respects as of Closing.

#### 5.14.16 Pre-Closing Bonus Amounts

Seller shall, or shall cause its Affiliates to, timely pay in the Ordinary Course on or prior to Closing any and all Pre-Closing Bonus Amounts to the extent due on or prior to Closing. Buyer shall, or shall cause its Affiliates to, timely pay in the Ordinary Course after Closing any and all Pre-Closing Bonus Amounts to the extent due after Closing and such payments shall be subject to indemnification under Section 7.1.1(a)(iii).

#### 5.4.17 Acquired Plans – Transfer of Assets and Liabilities

- (a) Subject to Section 5.4.17(b), on and following the Closing, the Target Group Companies will be responsible for each DBO (as defined in the Preparation Guide) Liability of Seller or its Affiliates, or a Target Group Company that is set forth on Annex 5.4.17(a), by jurisdiction and benefit plan name, to the extent such DBO Liabilities are with respect to Business Employees or Former Business Employees as set forth on Annex 5.4.17(a), or other participants in a DBO that cannot be excluded under applicable law as indicated on Annex 5.4.17(a) (collectively, the **Transferred DBO Participants**). For purposes of this Agreement, the **Former Business Employees** are former employees of the Target Group Companies who are not employed by the Target Group Companies on the Closing and who worked in the Business immediately prior to terminating employment with the Target Group Companies, other than employees who are employed by Seller or its Affiliates immediately after Closing. Seller will take all actions necessary prior to Closing so that as of Closing, the Target Group Companies have no Liabilities for any DBO other than any DBO with respect to the Transferred DBO Participants (the **Acquired DBO**). Subject to Section 5.4.17(b), prior to Closing, where applicable, Seller will take all actions necessary to transfer the assets held in the trust or funding vehicle associated with the Acquired DBO to a trust or funding vehicle maintained by a Target Group Company in compliance with all formalities (including prior approvals by regulatory authorities) that may be required in accordance with applicable Law, to the extent such transfer is required by applicable statutory or regulatory transfer rules (the **DB Acquired Plan Assets**). For the avoidance of doubt, all DB Acquired Plan Assets will be transferred in cash, unless Buyer determines that all or a portion of the DB Acquired Plan Assets be transferred in kind.
- (b) Seller shall take all actions necessary to cause the Clariant Plastics & Coatings USA LLC Combined Retirement Plan (the **P&C DB Plan**) to transfer as of the close of business on December 31, 2019 (the **DB Transfer Date**) to a defined benefit plan that is intended to qualify under Section 401(a) of the US Code and a related trust that is exempt under Section 501(a) of the US Code sponsored or maintained by Seller or an Affiliate that is not a Target Group Company (such plan and trust, the **Seller DB Plan**) all Liabilities for benefits (including ancillary benefits) accrued under the P&C DB Plan by the Excluded Participants so that as of the Closing, the P&C DB Plan will have Liability only with respect to Business Employees and Former Business Employees (or their beneficiaries or alternate payees). For purposes of this Agreement, the **Excluded Participants** are any participants (or beneficiaries or alternate payees of such participants) of the P&C DB Plan that are not Business Employees or Former Business Employees. Seller and Buyer agree that such transfer shall comply with the requirements of Sections 401(a)(12) and 411(d)(6) of the US Code. Without limiting the generality of the foregoing, following the DB Transfer Date, the Excluded Participants shall not

be participants in the P&C DB Plan, and the Seller DB Plan shall provide to the Excluded Participants all benefits (including ancillary benefits) earned by such individuals under the P&C DB Plan up to the DB Transfer Date. The transfer of assets from the P&C DB Plan trust to the Seller DB Plan with respect to the Excluded Participant Liabilities shall be conducted in accordance with Section 414(l) of the US Code and US Treasury Regulation Section 1.414(l)-1, and the value of benefit liabilities taken into account for purposes of such transfer of assets shall be determined by the enrolled actuary for the Seller DB Plan using the actuarial assumptions used by the Pension Benefit Guaranty Corporation at the time of transfer, in accordance with the requirements of Section 414(l) of the US Code. To the extent the transfer of assets from the P&C DB Plan to the Seller DB Plan determined in accordance with the preceding sentence occurs after Closing, Buyer agrees to reasonably cooperate with Seller and the enrolled actuary for the Seller DB Plan to complete such transfer.

- (c) As of the Closing Date, the US Target and Clariant Plastics & Coatings Canada Inc. (**Canada Target**) will assume and be responsible for all retiree welfare benefits (including, but not limited to, medical and death benefits) Liabilities set forth on Annex 5.4.17(a) for Business Employees and Former Business Employees of US Target and Canada Target (**Acquired Retiree Benefits Liability**). Where applicable, prior to the Closing Date, Seller shall take all reasonable actions necessary to transfer all retiree welfare benefit (including, but not limited to, medical and death benefits) Liabilities other than Acquired Retiree Benefits Liability from the US Target and Canada Target to Seller or one of its Affiliates that is not a Target Company so that as of the Closing no Target Company has any Liabilities associated with retiree welfare benefits maintained in the US or Canada other than the Acquired Retiree Benefits Liability.
- (d) Promptly following the date of this Agreement, the Parties shall cooperate in good faith to negotiate and promptly enter into an agreement pursuant to which the actions contemplated by this Section 5.4.17(d) will occur. Effective as of January 1, 2020:
  - i. Seller shall cause the Canada Target to establish and register a new registered pension plan of which it is the sponsoring employer and administrator solely for Business Employees and Former Business Employees (such newly established pension plan and its pension fund, the **Canada Target Plan**);
  - ii. Seller shall cause to be transferred the rights, duties and obligations of the sponsor and administrator of the Clariant Plastics & Coatings Canada Inc. and Affiliated Employers, Ontario registration 1025352 (such plan and its pension fund, the **Clariant Canada Plan**) to Seller or an Affiliate that is not a Target Group Company so that, as of the Closing, neither Canada Target nor any other Target Group Company is the sponsor of, or has any liabilities with respect to, the Clariant Canada Plan, and shall cause notice thereof to be given on a timely basis to applicable Governmental Authorities and relevant Business Employees, Former Business Employees and collective bargaining agents; and
  - iii. Seller shall cause the transfer from the Clariant Canada Plan to the Canada Target Plan of all Liability for pension benefits accrued under the Clariant Canada Plan (including ancillary benefits and defined contribution benefits) of Business Employees and Former Business Employees and a related amount of assets so that the Canada Target Plan has Liability only

with respect to Business Employees and Former Business Employees, it being agreed that: (i) such transfer of assets shall only be made with applicable regulatory approval pursuant to an agreement among Canada Target, the sponsoring employer or administrator of the Clariant Canada Plan, and the Buyer or an Affiliate designated by it; and (ii) Canada Target shall assume such Liability only when such transfer of assets is made.

#### **5.4.18 Release of Target Group Companies from Debt or Lien**

Except as otherwise set forth in this Agreement, at or prior to Closing, Seller shall deliver to Buyer, customary payoff letter, Lien (other than any Permitted Lien) and collateral releases and other documents to evidence the release of each Target Group Company from any Debt of the type described in clauses (a) and (c) of the definition thereof or Lien (other than any Permitted Lien) reasonably requested by Buyer or the Debt Financing Sources at least 60 (sixty) calendar days prior to Closing.

#### **5.4.19 Closing Balance Sheet**

Within (a) 14 (fourteen) Business Days following the Closing Date if the Closing Date is the last day of any financial quarter or (b) 20 (twenty) Business Days following the Closing Date if the Closing Date is not the last day of a financial quarter, Seller shall deliver to Buyer the unaudited balance sheets of (i) the Target Group Companies, and (ii), with respect to the Business (including such business of Seller or its Subsidiaries to the extent carried out in India), Clariant Chemicals (India) Limited (in the case of (i) detailed by each Seller designated entity code set forth on Annexes B-1, B-2(i), B-2(ii), B-3 and B-4 and in case of both (i) and (ii) at the B\_10 account level with intragroup balances, e.g. inventory, identified) as of the Closing Date.

#### **5.4.20 Environmental Assessments**

- (a) Promptly after the date of this Agreement, Buyer shall engage an expert (selection of such expert subject to approval by Seller, not to be unreasonably withheld, conditioned or delayed) and instruct (after reasonable consultation with Seller) such expert, at Buyer's sole cost and expense, to conduct a phase 1 environmental assessment on each Real Property determined by Buyer in its sole discretion (each a **Phase 1 Assessment**). Based on the result of such Phase 1 Assessment, the following shall apply:
  - i. If the result of the Phase 1 Assessment does not contain any recognized environmental conditions or indicia as to the presence of any potential or suspect Contamination (**RECs**), the relevant Real Property shall not be an Indemnified Site.
  - ii. Subject to Section 5.4.20(a)(iii), if pursuant to a Phase 1 Assessment Contamination is determined to exist, the relevant Real Property shall be an Indemnified Site.
  - iii. If the result of the Phase 1 Assessment does contain any RECs, the Buyer shall promptly engage an expert (selection of such expert subject to approval by Seller, not to be unreasonably withheld, conditioned or delayed) and instruct (after reasonable consultation with Seller) such expert, at Buyer's sole cost and expense, to conduct a phase 2 environmental assessment on such Real Property (each a **Phase 2 Assessment**). Buyer will

use its reasonable best efforts (and Seller shall, and shall procure that its Affiliates will, cooperate in good faith) to complete each Phase 2 Assessment prior to Closing; provided, however, that the failure to complete any Phase 2 Assessment prior to Closing shall not impact either Party's rights hereunder. If pursuant to a Phase 2 Assessment no Contamination is determined to exist, the relevant Real Property shall not be an Indemnified Site. However, if pursuant to a Phase 2 Assessment Contamination is determined to exist, the relevant Real Property shall be an Indemnified Site.

- (b) With respect to the Indemnified Sites that shall be owned by a Target Group Company at Closing, Seller shall have the right to carve out such sites from the Target Group prior to Closing in such way that, after Closing, (i) an Affiliate of Seller (other than any Target Group Company) will be the owner of such site, and (ii) a Target Group Company will have a perpetual lease of such site against a consideration of USD 1 per annum.

#### **5.4.21 Cash Treatment**

Seller shall use its reasonable best efforts to (i) have a sufficient level of Cash to support the Business's working capital needs and (ii) not have excess Cash at Closing.

### **6. Separation**

#### **6.1 Performance of Separation**

- (a) Seller shall complete the Separation in accordance with all applicable Laws, the terms of this Agreement and, in all material respects, the principles and provisions set out in the separation concept, attached hereto as Annex 6.1(a), as may be amended in accordance with the terms of Section 6.1(b) (the **Separation Concept**). Prior to Closing, Seller shall use commercially reasonable best efforts to separate each Shared Contract, such that a Target Group Company shall be a party to a Contract directly with the relevant third Person that is party to such Shared Contract on terms substantially similar as the Business Portion of each such Shared Contract. If any Shared Contract is not so separated prior to Closing, Seller will, to the extent permissible under the relevant Shared Contract, hold the Business Portion of such Shared Contract in trust for the benefit of Buyer until such Shared Contract is so separated or terminated in accordance with its terms and Buyer will perform and discharge the obligations thereunder.
- (b) Seller may, in its reasonable discretion, reassess, change, modify or amend the Separation Concept to reflect the respective operative requirements in connection with the Separation, provided that any such amendment (i) does not materially affect the scope of the Separation and (ii) is, in the aggregate, not to the economic detriment of Buyer. Seller shall provide Buyer with such amended Separation Concept within 5 (five) Business Days upon such change, modification or amendment is determined or, where required, internally approved.
- (c) Seller shall provide Buyer with the legal documentation implementing any transfer of material assets or Liabilities intended to implement each Separation Transaction and any Post-Separation Agreement, demonstrating the completion of each such Separation Transaction and

Post-Separation Agreement, to the extent executed, by February 1, 2020, or as soon as reasonably practicable following completion thereof.

- (d) Prior to Closing, Seller will use reasonable best efforts to provide or obtain, or cause to be provided or obtained, in compliance with applicable Laws or Contracts, all notices, approvals, authorizations, waivers, registrations, or filings required in connection with each Separation Transaction (including all required notices to any applicable Governmental Authority or employee of the Business).
- (e) Prior to Closing, Seller will use reasonable best efforts to enter into, or cause to be entered into, all Contracts, deeds, instruments of conveyance or any other applicable documents required in connection with each Separation Transaction.
- (f) As part of the Separation, to fill the employment positions identified in Annex 6.1(a), Seller will nominate (which nomination may not include, for the avoidance of doubt, offering more favorable terms of employment, including higher compensation, except as contemplated by the SID) certain of its or its Affiliates' service unit employees, each of which will be, at Closing, qualified to perform the functions of the position for which such employee is nominated (the **SU Employees**) for employment with a Target Group Company, and such nominated SU Employees may elect to either accept or reject such nomination for employment with a Target Group Company; *provided that* any such SU Employee that accepts such nomination shall be deemed a Business Employee and Seller shall as promptly as practicable notify Buyer of such acceptance and include such SU Employee on any required update to Annex 4.1.13, and the number of SU Employees shall not exceed the number of positions identified on Annex 6.1(a). For the avoidance of doubt, SU Employees that do not accept a nomination will not be considered "Business Employees" or "Former Business Employees."
- (g) Seller shall enter into the Post-Separation Agreements, as reasonably determined by Seller, to the extent reasonably necessary or appropriate to effect the Separation and in accordance with the Separation Concept and the SID and the economic principles set forth therein. The Post-Separation Agreements are listed in Annex 6.1(g)(i), which Seller shall update when delivering the copies of the Separation Agreements, as well as within five Business Days of the delivery of the Separation Completion Notice and at Closing. Seller shall not amend, modify or terminate the Post-Separation Agreements listed on Annex 6.1(g)(ii), without the prior consent of Buyer (which shall not be unreasonably withheld). From and after Closing, if Buyer reasonably requests to amend any Post-Separation Agreement (excluding any Post-Separation Agreements that have been Made Available) to maintain the economic and commercial relationships of the Business, on the one hand, and Seller and its Affiliates, on the other, reflected in the Separation Concept and/or the SID, Seller shall, and shall cause any of its Affiliates that is a party thereto, to enter into good faith negotiations to amend such Post-Separation Agreement, and if the Parties are unable to agree to terms of an amendment, either Party may terminate the Post-Separation Agreement on 30 days' notice without penalty.

## 6.2 Transitional Services

- (a) In accordance with and as set forth in the Separation Concept, Seller, its Affiliates and/or third parties will provide transitional services to the Target Group Companies for a certain period of time as from Closing (the **Transitional Services**) on the terms and as set forth in the transitional services agreement, substantially in the form as attached hereto in Annex 6.2 (the **Transitional Services Agreement**).
- (b) Within 30 (thirty) days after the date of this Agreement, and at least once every two weeks thereafter until Closing (unless otherwise agreed by the Parties), the Parties will use their reasonable best efforts to procure that their respective designees to the Transitional Services Planning Team meet in person or telephonically to discuss the Transitional Services and Seller shall, and shall procure that its Affiliates will, cooperate in good faith with respect to resolving any questions of Buyer or its Affiliates concerning the Transitional Services, including by providing Transitional Services Information to Buyer promptly upon Buyer's reasonable request and the Parties will cooperate in good faith in updating the schedules to the Transitional Services Agreement prior to Closing as necessary to reflect any changes to the Transitional Services arising out of any such meeting.

## 6.3 Separation Completion

- (a) Except for the Separation Transactions relating to Italy, Mexico and Japan and involving the demerger of the Company, each of which shall be completed no later than 5 (five) Business Days prior to Closing, Seller shall use its reasonable best efforts to have the Separation and all Separation Transactions completed by January 1, 2020, and in any event, will have the Separation and all Separation Transactions completed for accounting purposes effective as of January 1, 2020. Without prejudice to the provisions of Section 6.3(b), as soon as the condition set out in Section 3.2.1(c) is satisfied, Seller shall provide written notice to Buyer confirming completion of such condition (the **Separation Completion Notice**).
- (b) If, for any reason, Seller reasonably believes that one or several particular aspects of the Separation are not capable of being completed prior to or at Closing, then Seller shall promptly notify Buyer. For a period of 24 (twenty-four) months from and including Closing, Seller shall continue to use all reasonable best efforts to complete such aspect of the Separation at Seller's sole cost and expense. If the completion of such aspect of the Separation is not possible (or is excessively cumbersome for the Parties) prior to or following Closing, each Party shall use reasonable best efforts to (i) agree and implement or execute, at Buyer's sole discretion after consultation with Seller, an alternative approach for completing such aspect of the Separation, which has a substantially similar commercial, economic and beneficial effect as the approach set out in the Separation Concept and (ii) agree, in good faith, any compensation that is reasonably payable by Seller to Buyer (or, if applicable, by Buyer to Seller) in light of such alternative approach.
- (c) For the avoidance of doubt, the completion of the Separation shall not act to modify or waive any other rights or obligations of the Parties under this Agreement (including the representations of Seller in Section 4.1 (including Annex 4.1)).

- (d) As part of the Separation and prior to Closing, (i) Seller will cause each Target Group Company to transfer and convey to Seller or any of its Subsidiaries (other than a Target Group Company) all Excluded Assets that it owns, leases or has any right to use, and Seller will accept from such Target Group Company, and will cause any of its Subsidiaries (other than a Target Group Company) to accept from such Target Group Company, all such respective right, title and interest in and to any and all of such Excluded Assets and (ii) Seller will cause each Target Group Company to assign any Excluded Liability for which it is otherwise responsible to Seller or any of its Subsidiaries (other than a Target Group Company), and Seller will assume, perform and fulfill when due, and to the extent applicable, comply with, or will cause the or any of its Subsidiaries (other than a Target Group Company) to assume, perform and fulfill when due and, to the extent applicable, comply with, all of such Excluded Liabilities in accordance with their respective terms (the activities of Seller or its Affiliates under this Section 6.3(d), **Separation Clean Up Activities**).

#### 6.4 Separation Costs

- (a) Unless otherwise set forth herein, all costs (including, but subject to the limitations in clauses (u)-(z) of Section 5.3.2(a), Taxes), whether internal or external, relating to the Separation or any Separation Transaction (including costs incurred pursuant to Section 6.5), shall be borne by Seller.
- (b) Unless otherwise set forth herein, all costs, whether internal or external, relating to the integration of the Business into Buyer's group after the Closing shall be borne by Buyer.

#### 6.5 Additional Items

- (a) Without prejudice to the other provisions of this Agreement, if either Party identifies within 24 (twenty-four) months following the Closing Date any asset, Contract or right existing as of the Closing Date forming part of or required for the operation of the Business and which (a) is owned or held by Seller or its Affiliates (other than the Target Group) and (b) according to the principles set forth in the SID relates to the Business (each such asset, Contract or right, together with any and all liabilities attaching to any such asset, Contract or right, being a **Business Additional Item**), then, upon request of either Party, such Business Additional Item shall be transferred to the Buyer or an Affiliate designated by Buyer for zero consideration, *provided that* if such transfer of a Business Additional Item is not possible or reasonably likely to be excessively cumbersome and result in a material expense to Seller and/or its Affiliates, the Parties shall use reasonable best efforts to implement or execute an alternative approach for transferring the benefit and any Liabilities arising after such transfer attaching to such Business Additional Item to Buyer or an Affiliate designated by the Buyer, which has a substantially similar commercial, economic and beneficial effect. To the extent the Parties agree to transfer any Business Additional Item to the Buyer or an Affiliate designated by the Buyer following Closing, but prior to the date the Completion Accounts are agreed or determined in accordance with Annex 2.4, such Business Additional Item shall (for the purposes of the Completion Accounts) be considered to have been transferred to the Buyer or an Affiliate designated by the Buyer as of Closing.



- (b) Without prejudice to the other provisions of this Agreement, if either Party identifies within 24 (twenty-four) months following the Closing Date any asset, Contract or right existing as of the Closing Date forming part of or required for the operation of the Excluded Business and which (a) is owned or held by Buyer or its Affiliates (including the Target Group) and (b) according to the principles set forth in the SID relates to the Excluded Business (each such asset, Contract or right, together with any and all liabilities attaching to any such asset, Contract or right, being an **Excluded Business Additional Item**), then, upon request of either Party, such Excluded Business Additional Item shall be transferred to Seller or an Affiliate designated by Seller for zero consideration, *provided that* if such transfer of an Excluded Business Additional Item is not possible or reasonably likely to be excessively cumbersome and result in a material expense to Buyer and/or its Affiliates, the Parties shall use reasonable best efforts to implement or execute an alternative approach for retransferring the benefit and any liabilities arising after such retransfer attaching to such Excluded Business Additional Item to Seller or an Affiliate designated by Seller, which has a substantially similar commercial, economic and beneficial effect. To the extent the Parties agree to transfer any Excluded Business Additional Item to Seller or an Affiliate designated by Seller following Closing, but prior to the date the Completion Accounts are agreed or determined in accordance with Annex 2.4, such Additional Item shall (for the purposes of the Completion Accounts) be considered to have been transferred to Seller or an Affiliate designated by Seller as of Closing.

## 6.6 Cash Settlement Procedure for Misdirected Funds

If, after Closing:

- (a) any cash or funds relating to the Business is received by Seller or its Affiliates (other than the Target Group) and such cash or funds is (i) properly and reasonably for the account of Buyer or any of its Affiliates and (ii) if related to a pre-Closing period, is reflected in the Completion Accounts, then Seller shall pay (or procure that the Affiliate pays) such cash or funds to Buyer or any of its relevant Affiliates within 10 (ten) Business Days of the end of the month in which such cash or funds is received by Seller or its Affiliates (other than the Target Group);
- (b) any cash or funds relating to the Business is paid by Seller or its Affiliates (other than the Target Group) and such cash or funds (i) should properly and reasonably have been paid by Buyer or any of its Affiliates and (ii) if related to a pre-Closing period, is reflected in the Completion Accounts, then Buyer shall pay (or procure that its relevant Affiliate pays) such cash or funds to Seller within 10 (ten) Business Days of the end of the month in which such cash or funds is paid by Seller or its Affiliates (other than the Target Group), *provided that* Buyer shall only be required to pay Seller pursuant to this paragraph (b) in respect of any cash or funds relating to the Business paid by Seller or its Affiliates (other than the Target Group) if Seller (or its Affiliate) has provided Buyer with an invoice (or other reasonable evidence of payment) and reasonable details of the nature of the relevant payment made by Seller or its Affiliates (other than the Target Group);
- (c) any cash or funds relating to the Excluded Business is received by Buyer or its Affiliates (including the Target Group) and such cash or funds is (i) properly and reasonably for the account of Seller or any of its Affiliates and (ii) not reflected in the Completion Accounts, then

Buyer shall pay (or procure that the Affiliate pays) such cash or funds to Seller or any of its relevant Affiliates within 10 (ten) Business Days of the end of the month in which such cash or funds is received by Buyer or its Affiliates (including the Target Group); or

- (d) any cash or funds relating to the Excluded Business is paid by Buyer or its Affiliates (including the Target Group) and such cash or funds (i) should properly and reasonably have been paid by Seller or any of its Affiliates and (ii) is not reflected in the Completion Accounts, then Seller shall pay (or procure that its relevant Affiliate pays) such cash or funds to Buyer within 10 (ten) Business Days of the end of the month in which such cash or funds is paid by Buyer or its Affiliates (including the Target Group), *provided that* Seller shall only be required to pay Buyer pursuant to this paragraph (d) in respect of any cash or funds relating to the Business paid by Buyer or its Affiliates if Buyer (or its Affiliate) has provided Seller with an invoice (or other reasonable evidence of payment) and reasonable details of the nature of the relevant payment made by Buyer or its Affiliates.

## **7. Remedies and Liability**

### **7.1 Remedies of Buyer**

#### **7.1.1 Indemnification by Seller, Seller's Right to Cure and Seller's Liability**

- (a) Subject to the provisions of this Section 7.1, effective as of and after Closing, Seller shall indemnify, defend and hold harmless Buyer and each of Buyer's Affiliates (including the Target Group Companies) and each of their respective legal successors and permitted assigns (collectively, the **Indemnified Parties**), from and against any Losses resulting from (i) any breach or inaccuracy of any representation or warranty of Seller contained in Section 4.1 (including Annex 4.1), (ii) any breach of nonfulfillment of any covenant contained in this Agreement (other than the Ancillary Agreements), and (iii) any Excluded Liabilities.
- (b) With respect to any misrepresentation or other breach of this Agreement notified by Buyer to Seller pursuant to Section 7.1.2, Seller shall have the right, within 45 (forty-five) days after the receipt of the Notice of Breach, to cure such breach or put Buyer in the same position in which it would have been if no such misrepresentation or breach had occurred.
- (c) If and to the extent such cure is not effected within the period set forth in Section 7.1.1(b), Seller shall pay to Buyer or, if so designated by Buyer, to Buyer's Affiliate, subject to the exclusions and limitations set forth in this Agreement, including this Section 7.1, on a USD-per-USD basis the full amount of any Losses recoverable pursuant to Section 7.1.1(a).

#### **7.1.2 Notice of Breach**

- (a) Buyer shall deliver to Seller a notice in writing describing, with regard to each claim under this Agreement, the underlying facts in reasonable detail to the extent then known, referring to the provision of this Agreement being invoked and stating the amount of anticipated Losses relating to each claim, as well as disclosing to Seller such documents and information as reasonably available to support the respective claims (the **Notice of Breach**), in each case at the earlier of:

- i. 30 (thirty) Business Days after Buyer or Buyer's Affiliates, (including following Closing, any of the Target Group Companies) has obtained knowledge of the facts and circumstances that are reasonably likely to give rise to such claim; or
  - ii. 10 (ten) Business Days after Buyer or Buyer's Affiliates, (including following Closing, any of the Target Group Companies) has received written notice of any Third Party Claim; and
  - iii. in case of a submission (to the extent known by Buyer or Buyer's Affiliates, (including following Closing, any of the Target Group Companies)) to, or a decision or order by, any Governmental Authority that may give rise to such claim, promptly upon receipt of any such submission, decision or order but in any event Buyer will use, and will cause any relevant Buyer's Affiliate to use, its reasonable best efforts to provide such documents and information within such period as to afford Seller reasonable opportunity to respond to such submission, or lodge a timely appeal or challenge against such decision or order.
- (b) This Section 7.1.2 shall supersede the provision of article 201 CO, which shall not be applicable to this Agreement.
- (c) Failure to give Notice of Breach in accordance with Section 7.1.2(a) shall not exclude Seller's Liability hereunder (*Verwirkung*), *provided, however*, that Seller shall not be liable for any Losses to the extent the same is caused or increased by Buyer's failure to give duly and timely notice within the time period set forth in Section 7.1.2(a).

### 7.1.3 Time Limitations

- (a) Any claim by Buyer against Seller for misrepresentation or breach of warranty under Section 7.1.1(a)(i) shall be time-barred (*verjährt*) and precluded and forfeited (*verwirkt*), unless and to the extent Buyer timely delivers to Seller a Notice of Breach in accordance with Section 7.1.2(a) with respect to such claim on or before:
- i. with regard to the representations and warranties in Sections 8 (*Taxes*) and 14 (*Pensions and Benefit Plans, Social Security*) of Annex 4.1 (to the extent related to compliance with Tax Laws) the date that is 60 (sixty) days after the relevant statute of limitation expires with respect to such matter;
  - ii. with regard to the representations and warranties in Section 11 (*Environment*) of Annex 4.1, the date that is 5 (five) years after the Closing Date;
  - iii. with regard to Fundamental Representations (excluding the representation and warranty in Section 23(a) (*Title to Assets*), the 10<sup>th</sup> (tenth) anniversary of the Closing Date; and
  - iv. with regard to all other representations and warranties, 18 (eighteen) months after the Closing Date.
- (b) Any claim by Buyer against Seller for breach or nonfulfillment of any covenant or agreement of this Agreement under Section 7.1.1(a) (ii) (except with respect to Sections 5.3.1, 5.3.2, 5.4.9 and

8.2) shall be precluded and forfeited (*verwirkt*), unless and to the extent Buyer timely delivers to Seller a Notice of Breach in accordance with Section 7.1.2(a) with respect to such claim on or before the earlier of (i) the date that is one year after the date such covenants or agreements are fully satisfied and require no further performance or forbearance, or (ii) the date that is one year after the date as the rights of a Party or the terms of such covenant or agreement expire by the terms thereof.

- (c) Any claim by Buyer against Seller under Section 7.1.1(a)(ii) for breach or nonfulfillment of any covenant or agreement in Sections 5.3.1, 5.3.2 or 8.2 shall be precluded and forfeited (*verwirkt*), unless and to the extent Buyer delivers to Seller a Notice of Breach on or before the date that is 60 (sixty) days after the relevant statute of limitation expires with respect to such matter.
- (d) Any claim by Buyer against Seller under Section 7.1.1(a)(ii) for breach or nonfulfillment of any covenant or agreement in Section 5.4.9 shall be precluded and forfeited (*verwirkt*), unless and to the extent Buyer delivers to Seller a Notice of Breach on or before the date that is one year after the Restricted Period expires.
- (e) Any claim by Buyer against Seller under Section 7.1.1(a)(iii) relating to an Environmental Loss shall be precluded and forfeited (*verwirkt*), unless and to the extent Buyer delivers to Seller a Notice of Breach on or before the date that is 5 (five) years after the Closing Date.
- (f) Notwithstanding the foregoing, any claims by Buyer against Seller under this Agreement (other than with respect to a Third Party Claim) shall be precluded and forfeited (*verwirkt*) if the Parties are unable to resolve the matter after negotiating in good faith and Buyer fails to properly commence formal proceedings against Seller with respect to such claims in accordance with Section 9.2 (*Arbitration*) of this Agreement within 18 (eighteen) months after Buyer's respective Notice of Breach.
- (g) This Section 7.1.3 shall supersede the provision of article 210 CO, which shall not be applicable to this Agreement.

#### 7.1.4 Exclusion of Liability

- (a) All matters and information, which have been Fairly Disclosed
  - i. in this Agreement; or
  - ii. in the disclosure letter, dated as of the date of this Agreement, delivered to Buyer prior to the execution of this Agreement (the **Disclosure Letter**), including any documents attached to the Disclosure Letter, as set forth in Annex 7.1.4(a)(ii).

(such information pursuant to subsections (i)-(ii) above, the **Disclosure Documents**), shall solely to the extent Fairly Disclosed operate as an exclusion of or a limitation to or qualification of the representations of Seller in Section 4.1 (including Annex 4.1) and to Buyer's remedies available pursuant to Section 7.1.1(a)(i), and, accordingly, Seller shall be under no liability and Buyer shall not be entitled to be paid any sum pursuant to Section 7.1.1(a)(i).

- (b) The fact that certain matters, facts or circumstances may have been specifically disclosed in any of the Disclosure Documents or against a specific provision of Section 4.1 (including Annex 4.1) shall neither be construed to limit the effect of any Fair Disclosure of other matters, facts or circumstances in general or against any other provisions of Section 4.1 (including Annex 4.1) nor to limit the effect of the matters, facts or circumstances specifically disclosed against a specific provision of Section 4.1 (including Annex 4.1) in relation to any other provisions of Section 4.1 (including Annex 4.1) (as applicable).
- (c) This Section 7.1.4 shall supersede the provision of article 200 CO, which shall not be applicable to this Agreement.

#### 7.1.5 Third Party Claims

- (a) In case of any claim brought or threatened by a third party (including Governmental Authorities) against any Indemnified Party that is reasonably likely to give rise to an indemnification claim against Seller under this Agreement (such claim a **Third Party Claim**), Buyer shall notify Seller as soon as reasonably practicable with reasonable detail of the Third Party Claim (which shall indicate the amount (estimated, if necessary and to the extent feasible) of the Loss that has been or may be suffered by the Indemnified Party). Seller may, by written notice within 30 Business Days after receipt of the applicable notice by Buyer, assume and conduct the defense of the Third Party Claim *provided that*: (i) the defense of such Third Party Claim by Seller will not, in the reasonable judgment of the Indemnified Party, have a material adverse effect on the Indemnified Party or the Business; (ii) the Third Party Claim involves only money damages and does not seek any injunctive or other equitable relief or include criminal charges; (iii) Seller has sufficient financial resources, in the reasonable judgment of the Indemnified Party, to satisfy the amount of any adverse monetary judgment that is reasonably likely to result; (iv) if the named parties in any Third Party Claim include both Seller or any of its Affiliates and Buyer or any of its Affiliates, representation by the same counsel would, in the reasonable judgment of Buyer of the Indemnified Party, still be appropriate notwithstanding any actual or potential differing interests between them; (v) such Third Party Claim does not involve a Material Customer or Material Supplier; and (vi) Seller has confirmed to Buyer in writing that such Third Party Claim is one in respect of which it is obligated to indemnify Buyer hereunder subject to the limitations set out in this Section 7 and expressly agrees in writing to be fully responsible for all Losses relating to such Third Party Claim. Seller shall actively and diligently proceed with the defense of any Third Party Claim that it assumes and shall keep Buyer informed with respect to the status of the Third Party Claim. It is understood that Seller may waive at any time its right to assume and conduct the defense with respect to any particular Third Party Claim. If Seller does not assume, or is prohibited from assuming, the defense of a Third Party Claim in accordance with this Section 7.1.5(a), the Indemnified Party must defend the Third Party Claim. If Seller has assumed the defense of a Third Party Claim as provided in this Section 7.1.5(a), Seller will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of the Third Party Claim; *provided, however*, that if all of the conditions set forth in Section 7.1.5(a)(i)-(v) cease to be met or Seller fails to diligently defend such Third Party Claim, the Indemnified Party may assume its own defense, and Seller will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The

Indemnified Party has the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that Seller is defending as provided in this Agreement.

- (b) If Seller does not assume the defense of a Third Party Claim, at Buyer's request, Seller may, in its sole discretion, assist the Indemnified Party in the defense of a Third Party Claim at the Indemnified Party's cost and expenses.
- (c) Buyer shall not, and shall ensure that the Indemnified Party will not, settle any Third Party Claim without Seller's prior written consent, such consent not to be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing, but subject to Sections 7.1.5(a) and (b), Buyer and any Indemnified Party are free to conduct any such proceedings in a way other than as reasonably instructed by Seller and to settle any Third Party Claim without Seller's prior written consent, in which cases, however, Buyer shall be deemed to have forfeited its claim against Seller under this Agreement in relation to such Third Party Claim.
- (d) Seller shall not settle any Third Party Claim without Buyer's prior written consent, such consent not to be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing, Seller may, in its sole discretion and upon consultation with Buyer, settle any Third Party Claim for which Seller has assumed the defense in accordance with this Section 7.1.5 with the respective third party in full or in part, *provided that* such settlement does not impose any obligation or liability on Buyer or its Affiliates, provides for a full and unconditional release of Buyer's or its Affiliates' obligations vis-à-vis the third party that are covered by such settlement, does not include a statement or admission of fault, culpability or failure to act by or on behalf of Buyer or its Affiliates and does not grant injunctive or equitable relief.
- (e) Subject to any constraints under Laws applicable to Buyer or its Affiliates (including contractual restrictions), and without limiting the generality of Section 5.4.4, Buyer shall use reasonable best efforts, to make available to Seller and its advisors, at Seller's expense, any information or documents necessary for Seller to diligently proceed with the Third Party Claim for which it has assumed the defense.
- (f) Notwithstanding anything in this Section 7.1.5, Seller shall be solely responsible for defending any Known Proceedings, and with respect to any Known Proceedings involving a Material Customer or a Material Supplier, Buyer shall be reasonably consulted by Seller in connection with such defense.

#### **7.1.6 Threshold and De Minimis Amount**

- (a) For purposes of determining any breach or inaccuracy of any representation of Seller contained in Section 4.1 (including Annex 4.1), any "materiality" or any similar qualifications in the representations and warranties, shall be disregarded except for such qualifiers in Sections 3(b) (*Organization*), 4(b) (*Authorization*), 5(d) (*Subsidiaries*), 6 (*Deal Financial Statements*), 7(a)(ii) and (b)(ii) (*Conduct of Business*), 9(b) (*Real Estate*), 10(a) (*Intellectual Property and Know How*), 11(i) (*Environmental*), 14(a) and (b) (*Pensions and Benefit Plans, Social Security*), 15(a)(vi), (vii) and (ix), (b) and (d) (*Material Contracts*), the second sentence of 18(b) (*Compliance with Laws*), 22 (*Inventory*), the first use of the word "material" in and the second sentence of

23(a) (*Title to Assets*), the first use of the word “material” in the 23(b) (*Condition of Assets Fixed*), 24(e) (*No Undisclosed Liabilities*) and 28 (*Completion of Separation*) of Annex 4.1, and when used in the defined terms, “Material Contract,” “Hazardous Materials,” “Material Customer Agreement” and “Material Supply Agreement.”

- (b) Except for claims brought against Seller for breach or inaccuracy of the Fundamental Representations or the representation in Section 8 (*Taxes*) of Annex 4.1, Seller shall not be liable to the Indemnified Parties for claims asserted by the Indemnified Parties against Seller under Section 7.1.1(a)(i) unless (a) each such claim on a stand-alone basis, or series of related claims, exceeds USD 1,500,000 (the **De Minimis Amount**) and (b) the aggregate amount of all such claims which exceed the De Minimis Amount exceeds USD 15,000,000 (the **Threshold**). If the Threshold has been exceeded, Seller's liability to Buyer shall be for the aggregate of all claims (or series of related claims) without giving effect to the De Minimis Amount which is in excess of the Threshold.

#### 7.1.7 Cap

Except for claims brought against Seller for breach or inaccuracy of the Fundamental Representations, the representations in Section 8 (*Taxes*) of Annex 4.1, for breach or nonfulfillment of any covenant or agreement of this Agreement under Section 7.1.1(a)(ii) or for Excluded Liabilities under Section 7.1.1(a)(iii) (other than arising from an Excluded Liability referenced in clauses (a), (b), (c) or (e) of the definition of Excluded Liability, which are not subject to any cap), in which case Seller's aggregate liability shall not exceed 100% of the Preliminary Consideration, Seller's liability under this Agreement shall in no event exceed 15% of the Preliminary Consideration (the **Cap**).

#### 7.1.8 Other Limitations to Seller's Liability

- (a) Seller's liability with respect to any Losses for which any Indemnified Party seeks reimbursement against Seller under the terms of this Agreement shall be excluded or reduced, as the case may be, if, and to the extent:
  - i. an Indemnified Party has failed to comply with its statutory duty to mitigate such Losses (*provided that* such limitation shall only apply to the extent such Losses are directly caused by the failure to mitigate and shall not apply to expenses incurred by any Indemnified Party to mitigate such Losses);
  - ii. Buyer or any of its Affiliates (including, following Closing, any of the Target Group Companies) has recovered from any third party, including an insurer, such Losses; *provided that* Buyer shall use its commercially reasonable efforts to avail itself its insurance policies;
  - iii. Buyer would recover from Seller, under this Agreement or otherwise, more than the amount of such Losses actually incurred;
  - iv. a provision, liability, accrual, reserve or valuation allowance has been or is made or included for such Loss in the Final Completion Accounts;

- v. the facts, matters or circumstances which give rise to a claim against Seller under this Agreement result in a financial benefit (other than any Tax benefit) for Buyer or any of its Affiliates (including, following Closing, any of the Target Group Companies);
  - vi. such liability (or its increase) results from or is attributable to an intentional act, omission, transaction, change of past practice or arrangement of Buyer or any of its Affiliates (including, following Closing, any of the Target Group Companies) not in compliance with Laws or Contracts;
  - vii. such liability results from or is increased by the passing of, or any change in, any law, statute, ordinance, rule, regulation or administrative practice of any Governmental Authority taking effect after Closing (*provided, however*, that this clause (vii) shall not apply with respect to any Excluded Liability); or
  - viii. any Tax payable by Buyer or any of its Affiliates (including, following Closing, the Target Group Companies) in the taxable year in which any such Loss is paid or incurred, or in any of the three immediately succeeding taxable years, is actually reduced as a result of a claim by Buyer under this Agreement or the facts underlying such claim, determined on a "with and without" basis.
- (b) If Seller pays to Buyer an amount in respect of any claim asserted by Buyer against Seller under this Agreement and Buyer or any of its Affiliates (including, following Closing, any of the Target Group Companies) subsequently recovers from any third party, including an insurer, a sum which is referable to such claim, Buyer shall repay to Seller such sum (net of any collection expenses).
  - (c) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement, including this Section 7.1, shall prevent an Indemnified Party from bringing any claim against (or claiming indemnification under this Section 7.1 from) against any Person based on fraud or intentional misconduct, intentional misrepresentation or intentional breach of warranty.

#### **7.1.9 Limitations to Seller's Liability for Environmental Losses**

Without prejudice to the provisions of this Section 7.1 (excluding Section 7.1.8), Seller shall not be liable for any Environmental Losses to the extent that the relevant Environmental Losses have arisen or been increased, exacerbated or caused as a result of any of the following occurring after Closing:

- (a) any act or omission of Buyer or any of its Affiliates (or their respective officers, employees, agents or contractors) that causes a Release which first occurs after Closing;
- (b) any change, or proposed change, of use of part or all of the Indemnified Sites to a residential, hospitality or educational use that is more environmentally sensitive according to planning Laws, zoning Laws or land use Laws than the use that is being made of the Indemnified Sites at the Closing Date;



- (c) information provided by or on behalf of Buyer or any of its Affiliates (or their respective officers, employees, agents or contractors) to a Governmental Authority except;
  - i. where such information has been provided in accordance with past practice prior to Closing;
  - ii. where there is an obligation to provide such information under any Environmental Law or Permit issued pursuant to any Environmental Law;
  - iii. where the information is provided to comply with a Governmental Requirement;
  - iv. where required by any judgment or order from a Governmental Authority;
  - v. where Seller has approved this course of action in writing; or
  - vi. where reasonably necessary in connection with the operation of the Business in the ordinary course, including any proposed or planned changes or modifications to Business operations, facilities, structures or equipment and any related Permit obligations or amendments as may be necessary or any obligations under any Environmental Law or Governmental Requirement;
- (d) the carrying out by, or on behalf of, Buyer or any of its Affiliates of any voluntary soil or groundwater sampling in, on, at, under or adjacent to any of the Indemnified Sites, except when such sampling is:
  - i. required by any Environmental Law, Permit (issued pursuant to any Environmental Law) or any Governmental Requirement;
  - ii. reasonably necessary to defend against or respond to any Environmental Third Party Claim; or
  - iii. reasonably necessary to investigate conditions that may pose an imminent or substantial risk to human health or the environment;
- (e) any Remedial Action that is conducted by or on behalf of Buyer or any of its Affiliates that goes beyond the standard under Environmental Law, Governmental Requirement or a Permit relating to Environmental Laws for industrial land uses unless a more environmentally sensitive use was occurring at the Indemnified Sites at Closing;
- (f) the potable use of groundwater from wells at an Indemnified Site to the extent groundwater was not previously used for potable purposes at the Indemnified Site prior to Closing; or
- (g) the long-term or permanent closure or decommissioning of substantially all operations at any Indemnified Site including the cleaning out of any plant or equipment or the removal and disposal of any Hazardous Materials upon such closure or decommissioning, unless such site is set forth on Annex 7.1.9(g).

#### **7.1.10 Limitations Cumulative**

The limitations to Seller's liability set forth in this Section 7.1 shall be cumulative.

#### **7.2 Remedies of Seller**

The provisions of Section 7.1 (*Remedies of Buyer*), shall apply *mutatis mutandis* with respect to any claims by Seller based on (i) any breach or inaccuracy of any representation of Buyer contained in Section 4.2 (including Annex 4.2), or (ii) any breach or nonfulfillment of any covenant or agreement of Buyer contained in this Agreement. For the avoidance of doubt, the provisions of Section 7.1 (*Remedies of Buyer*) shall not apply *mutatis mutandis* to any claims by Seller under Sections 5.3.2(c) and 5.3.2(d).

#### **7.3 Remedies Exclusive**

The remedies of the Parties set forth in this Agreement (including Section 8.10) shall be in lieu of, and not in addition to, the remedies and termination rights provided for under statutory Law. All other remedies, including (a) any and all rights pursuant to articles 192 et seq. and 197 et seq. CO and any rights of a similar nature, (b) the right to rescind this Agreement (*Wandelung*) under article 205 CO or otherwise, (c) the right to challenge the validity of this Agreement for fundamental error under articles 23 et seq. CO, and (d) any remedies under the theory of *culpa in contrahendo* shall not apply and are hereby expressly waived.

### **8. General Provisions**

#### **8.1 Payments; Currency Conversion**

Except as explicitly otherwise provided in this Agreement, in particular in Annex 2.4 Part 2, Part A, 2(d)(ix), all payments under this Agreement shall be paid by or on behalf of the relevant Party by wire transfer in immediately available funds in CHF to the bank account(s) designated in writing by the Party entitled to the respective payment. To the extent any Loss is made in a currency other than CHF, such amount shall be converted to CHF based on the applicable conversion rate, as reported on Bloomberg, available at the close of the Business Day immediately prior to such payment being made.

#### **8.2 Taxes**

- (a) Except as otherwise provided in this Agreement and subject to Sections 8.2(b), (c) or (d) below, each Party shall bear all Taxes (other than, for the avoidance of doubt, Indemnified Taxes, which shall be the responsibility of Seller), including transaction taxes, for which it is primarily liable under applicable Law and which are incurred by or levied on it in connection with the Transactions.
- (b) Each of Seller and Buyer shall pay half of the securities transfer stamp tax (*Umsatzabgabe*) payable in connection with the Transactions (excluding the Separation and the purchase and sale of the Shareholder Loans, which securities transfer stamp taxes, if any, are solely the responsibility of Seller).

- (c) Each of Seller and Buyer shall pay half of the stamp duties and transfer taxes on real estate (including *Handänderungssteuern* and *Grunderwerbsteuer* or under Peruvian Law), if any, payable in connection with the Transactions (excluding the Separation, which transfer taxes, if any, are solely the responsibility of Seller).
- (d) Each of Seller and Buyer shall pay half of any VAT payable in connection with the Transactions (excluding the Separation) to the extent that such VAT is not refundable or otherwise recoverable under applicable Law.
- (e) The Parties shall cooperate on a reasonable basis to prepare and file any Tax Returns required to be filed with respect to Taxes described in Section 8.2(b), (c) or (d) and to reduce, eliminate or claim an exemption from any such Taxes.

### **8.3 Costs and Expenses**

Except as otherwise provided in this Agreement, each Party shall bear its own costs and expenses (including advisory and legal fees) incurred in the negotiation, preparation and completion of this Agreement.

### **8.4 Effect on Third Parties**

Except as otherwise expressly provided in this Agreement, no Person other than the Parties (and Indemnified Parties with respect to Sections 7.1 and 7.2) shall have any rights or benefits under this Agreement, and nothing in this Agreement is intended to confer on any Person other than the Parties any rights, benefits or remedies; *provided, that* the Debt Financing Sources shall be express third-party beneficiaries of and shall be entitled to rely upon the Xerox Provisions and each Debt Financing Source may enforce such provisions.

### **8.5 Notices**

- (a) All notices, requests or other communications to be given under or in connection with this Agreement shall be made in writing and delivered by registered, certified or express mail (return receipt requested), an internationally recognized courier, electronic mail or facsimile transmission as follows:

if to Seller: Clariant AG  
Att.: General Counsel  
Rothausstrasse 61  
4132 Muttenz, Switzerland  
E-mail: alfred.muench@clariant.com

with a copy to: Homburger AG  
Att.: Frank Gerhard and Daniel Hasler  
Hardstrasse 201  
8005 Zurich, Switzerland  
E-mail: frank.gerhard@homburger.ch  
daniel.hasler@homburger.ch

if to Buyer: PolyOne Corporation  
33587 Walker Road  
Avon Lake, Ohio 44012  
Att.: Lisa Kunkle  
Joel Rathbun  
E-mail: lisa.kunkle@polyone.com  
joel.rathbun@polyone.com

with a copy to: Jones Day  
250 Vesey St.  
New York, New York 10281  
Att.: James P. Dougherty  
E-mail: jpdougherty@jonesday.com

and

Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Att.: Benjamin L. Stulberg  
E-mail: blstulberg@jonesday.com

or such other address as any Party may notify to the other Party in accordance with the above. Any notice to be given hereunder shall be given prior to the expiry of a term or deadline (if any) set forth in this Agreement or by applicable Law.

- (b) Any notice to be given hereunder shall be effective only if it was (i) timely and duly given in accordance with Section 8.5(a) and (ii) actually received by the Party to whom it is addressed, irrespective of whether such notice was received prior to or after the expiry of the respective term or deadline (if any).

## 8.6 Entire Agreement

This Agreement, including the Annexes and any other documents referred to herein constitute the entire agreement and understanding among the Parties with respect to the subject matter of this Agreement,

and shall supersede all prior oral and written agreements and understandings of the Parties relating hereto.

#### **8.7 Amendments and Waivers**

This Agreement may only be modified or amended by a document signed by the Parties. Any provision contained in this Agreement may only be waived by a document signed by the Party waiving such provision. Notwithstanding the foregoing, to the extent any modification, amendment or waiver to a Xerox Provision is sought that is adverse to the rights of any of the Debt Financing Sources, the prior written consent of the Debt Financing Sources shall be required before such modification, amendment or waiver is rendered effective.

#### **8.8 Assignment**

Except as otherwise expressly provided in this Agreement, a Party shall not assign this Agreement or any rights or obligations hereunder, including, but not limited to, by way of a demerger (*Spaltung*) or bulk transfer (*Vermögensübertragung*) or similar transaction, to any third party without the prior written consent of the other Party; *provided, however*, that either Party may assign this Agreement and any or all rights hereunder, in whole or in part, to one or more of its wholly owned Subsidiaries without the prior written consent of the other Party, *provided that* any such assignment shall not relieve such assigning Party of any of its obligations hereunder.

#### **8.9 Severability**

If any part or provision of this Agreement or the application of any such part or provision to any Person or circumstance shall be held to be invalid, illegal or unenforceable in any respect by any competent Governmental Authority, (a) such invalidity, illegality or unenforceability shall not affect any other part or provision of this Agreement or the application of such part or provision to any other Person or circumstances, and (b) the Parties shall endeavor to negotiate a substitute provision that best reflects the economic intentions of the Parties without being invalid, illegal or unenforceable, and shall execute all agreements and documents required for its implementation.

#### **8.10 Specific Performance**

Each Party's obligation under this Agreement is unique. If any Party should breach its covenants, agreements, warranties, representations or other obligations under this Agreement, the Parties each acknowledge that it would be impossible to measure the resulting damages. Accordingly, the non-breaching Party, in addition to any other available rights or remedies it may have under the terms of this Agreement, will be entitled to specific performance or to obtain an injunction or injunctions to prevent breaches of this Agreement, and each Party expressly waives the defense that a remedy in damages will be adequate and acknowledges that the non-breaching Party would be irreparably harmed by such breach; *provided, however*, that if a Party obtains specific performance or other equitable remedies of the sort described in this Section 8.10, then such Party shall also be entitled to all Losses incurred in connection with obtaining such specific performance or such other equitable remedies; *provided, further*, that Seller shall be entitled to specific enforcement against Buyer to consummate the Closing if, and only if, (a) all conditions set forth in Sections 3.2.1 and 3.2.3 have been satisfied (other than those conditions

that by their terms are to be satisfied at Closing, each of which is reasonably capable of being satisfied at Closing, (b) Buyer fails to complete the Closing by the date that Closing should have occurred pursuant to Section 3.1, assuming satisfaction of the conditions that by their terms are to be satisfied at Closing, (c) the Debt Financing has been funded, or will be funded, at Closing, and (d) Seller has irrevocably confirmed in writing to Buyer that if specific performance is granted and the Debt Financing is funded, the Closing will occur.

#### **8.11 Further Assurances**

Following Closing, Seller and its Affiliates and Buyer and its Affiliates each shall use reasonable best efforts to execute, acknowledge and deliver such documents and other papers and take or cause to be taken such further action as may reasonably be required to carry out the provisions of this Agreement and the Ancillary Agreements and to fully effectuate the Transactions.

#### **8.12 Lender Limitations**

Notwithstanding anything to the contrary contained in this Agreement, each of the Parties: (a) agrees that it will not bring or support any Person in any legal proceeding, cross claim or third-party claim of any kind or description, whether at Law or in equity, whether in contract or in tort or otherwise, against any of the Debt Financing Sources in any way relating to this Agreement, the Ancillary Agreements or the Transactions, including any dispute arising out of or relating in any way to the Debt Financing Commitments or the performance thereof or the Debt Financing contemplated thereby, in any forum other than the US federal and New York state courts located in the Borough of Manhattan within the City of New York; (b) agrees that, except as specifically set forth in the Debt Financing Commitments, all legal proceedings (whether at Law, in equity, in contract, in tort or otherwise) against any of the Debt Financing Sources in any way relating to the Debt Financing Commitments or the performance thereof or the Debt Financing contemplated thereby, shall be exclusively governed by, and construed in accordance with, the internal Laws of the US State of New York, without giving effect to principles or rules or conflict of Laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction; and (c) hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury in respect of any litigation (whether in Law or in equity, whether in contract or in tort or otherwise) directly or indirectly arising out of or relating in any way to the Debt Financing Commitments or the performance thereof or the Debt Financing contemplated thereby. Notwithstanding anything to the contrary contained in this Agreement, (i) Seller and the Target Group Companies and their respective Affiliates, directors, officers, employees, agents, partners, managers, members or stockholders shall not have any rights or claims against any Debt Financing Source, in any way relating to this Agreement, the Transactions, the Debt Financing or the transactions contemplated thereby, or in respect of any other document or any of the transactions contemplated thereby, or in respect of any oral or written representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Financing Commitments or the performance thereof or the Debt Financing contemplated thereby, whether at Law or equity, in contract, in tort or otherwise, and Seller (on behalf of itself, the Company, and each of Seller's and the Company's Subsidiaries and any of their respective Affiliates, directors, officers, employees, agents, partners, managers, members, representatives or stockholders) agrees not to commence (and if commenced, agrees to dismiss or otherwise terminate) any legal proceeding against any Debt Financing Source in connection with this Agreement or the Transactions (including any legal proceeding relating to the Debt Financing or the Debt Financing

Commitments) and (ii) no Debt Financing Source shall have any Liability (whether in contract, in tort or otherwise) to Seller, the Company, any of the Company's Subsidiaries or any of their respective Affiliates, directors, officers, employees, agents, partners, managers, members, representatives or stockholders for any obligations or liabilities of any Party under this Agreement or for any claim based on, in respect of, or by reason of, the Transactions or in respect of any oral or written representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Financing Commitments or the performance thereof or the Debt Financing contemplated thereby, whether at Law or equity, in contract, in tort or otherwise; *provided that* nothing in this Section 8.12 shall limit the Liability or obligations of the Debt Financing Sources to Buyer and its Affiliates (and its successors and assigns) under the Debt Financing Commitments or any definitive debt financing agreement. Further, nothing in this Section 8.12 shall in any way limit or qualify the liabilities of the parties to the Debt Financing to each other thereunder or in connection therewith.

### **8.13 Construction**

Unless otherwise expressly provided herein, for purposes of this Agreement, the following rules of interpretation shall apply:

- (a) when calculating the period of time before which, within which or following which any act is to be done or step taken, the date that is the reference date in beginning the calculation of such period shall be excluded (for example, if an action is to be taken within two calendar days of a triggering event and such event occurs on a Tuesday, then the action must be taken by the end of the day on Thursday) and if the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day;
- (b) any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa;
- (c) the provision of a Table of Contents, the division into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement and all references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of this Agreement;
- (d) unless otherwise specified, references to any Law or other statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such Law or other statute, rule, regulation or form as amended, modified, supplemented, replaced or interpreted from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section;
- (e) words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder" refer to this Agreement as a whole and not merely to any particular section or provision of this Agreement;
- (f) the word "including" and any variation thereof means "including without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it;

- (g) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean “if”;
- (h) all references to any period of days are to the relevant number of calendar days unless otherwise specified;
- (i) where an indemnity is given for a claim under this Agreement from a compensating party to a compensated party pursuant to Section 7.1.1(a)(i) or Section 7.1.1(a)(iii), such indemnity shall be given within the meaning of article 111 CO (*selbständige Garantie*) irrespective of any fault, disclosure or knowledge (save as expressly provided otherwise in Section 7.1.4 (Exclusion of Liability)) on the part of the compensating party;
- (j) unless otherwise specified, a reference to any other document is a reference to that other document as amended, revised, varied, novated or supplemented at any time;
- (k) unless otherwise specified, a reference to any person includes a reference to any Person as well as to any of its successors, assignees and transferees;
- (l) to the extent this Agreement and the Preparation Guide conflict, this Agreement shall control;
- (m) where this Agreement provides that a Party shall cause, procure or ensure a certain action or situation, such Party shall be strictly liable for such action or situation being effected or realized, without regard to negligence or other fault (*verschuldensunabhängige Erfolgschaftung*);
- (n) each Party has participated in the drafting of this Agreement, which each Party acknowledges is the result of negotiations among the Parties (as sophisticated Persons), and consequently, this Agreement shall be interpreted without reference to any Laws to the effect that any ambiguity in a document be construed against the drafter; and
- (o) to the extent there is any conflict between the terms of this Agreement and those of any Ancillary Agreement, Post-Separation Agreement or Shareholder Loan entered into after the date of this Agreement, the terms of this Agreement shall control.

## **9. Governing Law and Arbitration**

### **9.1 Governing Law**

This Agreement shall be exclusively governed by and construed in accordance with the substantive Laws of Switzerland, excluding its conflict of Laws principles and excluding the UN Convention on Contracts for the International Sale of Goods.

### **9.2 Arbitration**

Any dispute, controversy or claim arising under, out of or in relation to this Agreement (or subsequent amendments thereof), in particular as to its existence, validity, interpretation, performance, breach or termination, including tort claims, shall be referred to and finally determined by arbitration in accordance



with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce as in force on the date on which notice of Arbitration is submitted. The arbitral tribunal shall consist of three arbitrators. The two arbitrators appointed by the Parties shall designate within 10 (ten) Business Days the chairperson of the arbitral tribunal. In case of default of the respondent or if the two arbitrators appointed by the Parties fail to designate a chairperson, the chairperson shall be designated by the President of the Zurich Chamber of Commerce. The language to be used in the arbitral proceedings shall be English. The place of arbitration shall be Stockholm, Sweden.

*[Signatures on the next page]*

Executed as of the date written on the cover page to this Agreement.

**Clariant AG**

\_\_\_\_\_/s/ Alexander Gehrt

Dr. Alexander Gehrt  
Head of Group Mergers & Acquisitions

\_\_\_\_\_/s/ Alfred Münch

Alfred Münch  
General Counsel

**PolyOne Corporation**

\_\_\_\_\_/s/ Joel R. Rathbun

Joel R. Rathbun  
Senior Vice President, Mergers & Acquisitions

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## B. Other Definitions

**Accounting Principles** shall mean the preparation, valuation and classification principles according to, unless specified otherwise in this Agreement, IFRS, as applied by Seller as noted in its ECAM Manual.

**Affiliate** shall mean another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise

**Affiliate Transaction** shall mean any Contract (other than this Agreement, the Shareholder Loans, and the Ancillary Agreements) between Seller or one or more of its Affiliates (other than any Target Group Company or Dedicated JV Subsidiaries), on the one hand, and one or more Target Group Companies or Dedicated JV Subsidiaries, on the other hand.

**Agreement** shall mean this Share Purchase Agreement including all of its Annexes and the Disclosure Letter.

**Amendments to Supply Agreements** shall mean each of (a) the amendment to the Framework Supply Agreement, dated as of August 27, 2019, between the Company and Colorants International Ltd and (b) the amendment to the Framework Supply Agreement, dated as of August 27, 2019, between the Company and Clariant International Ltd, substantially in the forms attached hereto as Annex 3.5.2(j).

**Ancillary Agreements** shall mean each of (a) the Transitional Services Agreement, (b) the Amendments to Supply Agreements, (c) the German Property Sale Agreement, (d) the Peruvian Business Sale Agreement, and (e) the Post-Separation Agreements.

**Announcement 7** shall mean the Announcement of the State Administration of Taxation on Several Issues Concerning the Corporate Income Tax on the Indirect Transfers of Properties by Non-Resident Enterprises, SAT Announcement (2015) No. 7, promulgated by the State Administration of Taxation of China on February 3, 2015, as amended, supplemented, modified or interpreted from time to time by any implementing rules and regulations, and any successor rule or regulation thereof under the Laws of the People’s Republic of China.

**Announcement 7 Reporting Package** shall mean all materials and information to be submitted to the applicable Governmental Authority pursuant to Article 9 of Announcement 7 relating to the Transactions, including the indirect transfer of the equity interests of Clariant Chemicals (Guangzhou) Ltd. and Clariant Masterbatches (Shanghai) Ltd. as a result of Buyer’s purchase of the Shares.

**Blocking Period** shall mean any blocking period, statutory holding period, disposal restriction or similar restrictions relating to previous restructurings of Seller and its Affiliates and/or the Target Group Companies or Dedicated JV Subsidiaries (including the Separation) and which is specifically disclosed in Annex 5.3.2(a).

**Business Day** shall mean any day, other than a Saturday or a Sunday, on which the commercial banks in Zurich, Switzerland and the City of New York, New York are open for business throughout the day.

**Business Portion** shall mean, with respect to any Shared Contract, the rights and obligations under such Shared Contract to the extent in respect of the Business; provided that, for the avoidance of doubt, in no event shall any Excluded Business Portion of a Shared Contract be deemed to constitute a Business Portion of such Shared Contract.

**Cash** shall mean all cash and cash equivalents including bank and other depository accounts and safe deposit boxes, demand accounts, checks, money orders, marketable securities, short-term investment, certificates of deposit, time deposits, negotiable instruments, securities and brokerage accounts, of each Target Company and Dedicated JV Subsidiary as of the Effective Time excluding (a) any item included in the calculation of Net Working Capital pursuant to the terms of the Agreement, and (b) any Excluded Asset or Excluded Liability, all calculated in accordance with Parts A and C of the Preparation Guide. Cash will also include any other amounts identified as Cash in Part A and C of the Preparation Guide.

**CH80** shall mean the Company.

**CHF** shall mean Swiss Francs, being the lawful currency of Switzerland.

**Closing** shall mean the consummation of the US Sale, the German Property Sale, the Peruvian Business Sale and the sale and purchase of the Shares and the Shareholder Loans upon the consummation of the actions set forth under Section 3.5.

**Closing Date** shall mean the date on which Closing actually occurs.

**CO** shall mean the Swiss Code of Obligations (Obligationenrecht) (SR 220).

**Completion Accounts** shall mean the Proposed Completion Accounts and/or the Final Completion Accounts, as the case may be.

**Confidentiality Agreement** shall mean the Transaction Confidentiality and Exclusivity Agreement between the Parties of January 18, 2019, including the first amendment thereof of July 1, 2019, the second amendment thereof of July 27, 2019 and the third amendment thereof of October 2, 2019.

**Contamination** shall mean the presence of any Hazardous Materials in any ambient or indoor air, soil, land, soil gas, surface water and/or groundwater (including any sediments) and building structure at an Indemnified Site at any time before or on the Closing Date.

**Contract** shall mean any agreement, contract, commitment, instrument, undertaking, lease, note, mortgage, indenture, sales or purchase order, license, arrangement or other obligation that is legally binding, whether written or oral.

**Data Protection Laws** shall mean any Law relating to the processing of personal data by the Company, the Business, the Existing Business Subsidiaries with respect to the Business, the Dedicated JV Subsidiaries and the Target Subsidiaries, in any jurisdiction in which they operate, including the General Data Protection Regulation (EU 2016/679) (GDPR).

**Deal Financial Statements** shall mean the unaudited pro-forma financial statements of the Business as per the 12 months periods ending December 31, 2016, 2017 and 2018 set forth in pages 19, 102 and 110 of the document Made Available under reference no. 16.01.02.01, including the assumptions made there-in, and prepared in accordance with the Accounting Principles, disclosing selected financial information of the Business as if the Separation were completed as at the respective record dates of such pro-forma financial statements.

**Debt** shall mean any liability of any Target Company or Dedicated JV Subsidiary as of the Effective Time (a) for borrowed money (including the current portion thereof), (b) payable under a letter of credit, bankers' acceptance or note purchase facility, but solely to the extent drawn, (c) payable under a bond, note, de-benture or similar instrument, (d) for leases as set forth in Section 2(s) of the Specific Accounting Policies contained in the Preparation Guide, (e) for all or any unpaid part of the deferred purchase price of property or services (other than trade payables), including any "earnout" or similar payments payable at or after the Effective Time, (f) payable under interest rate swap, hedging or similar agreements, (g) any employee retention bonus (including the amounts referred to in paragraph 4.4(b) of Part C of the Preparation Guide) payable that is not a transaction expense, or (h) the DBO-related amount detailed in Section 3.1(f) of Part C of the Preparation Guide, or (i) in relation to the preceding subclauses (a)-(h) ((i) including, for the avoidance of doubt, (A) any and all liabilities for unpaid accrued interest, success fees, prepayment premi-ums, make-whole premiums or penalties and fees or expenses (including attorneys' fees) due to the pre-payment of any Debt on or prior to Closing, (B) cash, book or bank account overdrafts, and (C) an amount equal to the Fixed Loan Consideration, and (ii) excluding, for the avoidance of doubt, any Excluded Liabil-ity), all calculated in accordance with and subject to the requirements of, Parts A and C of the Preparation Guide.

**Debt Financing Sources** shall mean the Persons (including the Buyer Lenders) that have committed to provide the Debt Financing, any debt being issued in lieu of any portion of the Debt Financing or any Alter-native Debt Financing in connection with the Transactions pursuant to the Debt Financing Commitments, or have otherwise entered into agreements in connection with the Debt Financing and any joinder agree-ments, indentures or credit agreements entered into pursuant thereto or relating thereto, together with their respective Affiliates, and their and their Affiliates' respective officers, directors, employees, partners, trustees, shareholders, controlling persons, agents and representatives of the foregoing, and their respec-tive successors and assigns.

**Economic Sanctions Law** means any economic or financial sanctions Laws, including any Laws and regulations administered or enforced by the US (including by OFAC or the US Department of State), the United Nations Security Council, the EU and/or Switzerland.

**Effective Time** shall mean 23:59 CET on the Closing Date.

**Effects** shall mean any change, effect, development, circumstance, condition, state of facts, event or oc-currence.

**Employee Benefit Arrangements** shall mean material severance, salary continuation, retention, change in control, termination, incentive, fringe benefit or other similar arrangements, in each case (a) in respect of any present or former employees, directors or officers of the Business, (b) that are (or after completion of the Separation will be) sponsored or maintained by a Target Group Company, or Dedicated JV Subsidi-ary or with respect to which any Target Group Company or Dedicated JV Subsidiary has made or is (or after completion of the Separation will be) required to make payments, transfer or contributions, or (c) with respect to which Buyer or any of its Affiliates (including the Target Group Companies and Dedicated JV Subsidiaries) will have any Liability after Closing.



**Employee Benefit Plans** shall mean pension, retirement, death benefit, welfare plans, incentive, equity based, deferred compensation or other employee benefit plans, funds, or plans of any kind (excluding, for the avoidance of doubt, any such plans which are required by Law), whether or not funded, in each case (a) in respect of any present or former employees, directors or officers of the Business, (b) that are (or after completion of the Separation will be) sponsored or maintained by a Target Group Company or Dedicated JV Subsidiary or with respect to which any Target Group Company or Dedicated JV Subsidiary has made or is (or after completion of the Separation will be) required to make payments, transfer or contributions, or (c) with respect to which Buyer or any of its Affiliates (including the Target Group Companies and Dedicated JV Subsidiaries) will have any Liability after Closing.

**Environment** shall mean soil, surface waters, groundwater, drinking water, land, stream sediments, natural resources, surface or subsurface strata, ambient air or indoor air, including any material or substance used in the physical structure of any building or improvement.

**Environment Third Party Claim** shall mean, to the extent related to any Contamination, any civil, criminal, regulatory, administrative or other formal (including arbitral) proceedings, or any claims, complaints or demands or threatened proceedings brought or made by any third party against Buyer or any of its Affiliates.

**Environmental Condition** shall mean any condition of the Environment with respect to (a) the Owned Real Property, (b) the Leased Real Property, (c) any property previously owned, leased or operated by Target Group Companies to the extent such condition of the Environment existed at the time of such ownership, lease or operation, or (c) any other real property at which any Hazardous Material generated by the operation of the Target Group Companies prior to Closing has been treated, stored or disposed of, or has otherwise come to be located, which in each case of (a), (b), (c) or (d) violates any Environmental Law or results in any Release, or threat of Release, order or Liability.

**Environmental Law** shall mean any Law relating to: public or workplace health and safety; protection of the Environment; Releases or threats of Releases of Hazardous Materials; the presence, storage, use, treatment, transportation, management, handling, generation, production, manufacture, importation, exportation, sale, distribution, labeling, recycling, processing, testing, control or cleanup of Hazardous Materials (or products containing Hazardous Materials); or injury or harm to Persons relating to exposure to Hazardous Materials.

**Environmental Losses** shall mean any Losses incurred by Buyer or any of its Affiliates after the Closing Date arising out of any Contamination triggered by:

(a) receipt by Buyer or any of its Affiliates of a Governmental Requirement

(b) receipt by Buyer or any of its Affiliates of a notification of any Environment Third Party Claim; and/or

(c) an obligation under Environmental Laws or a Permit (relating to Environmental Laws) or a Contract entered into prior to Closing to carry out Remedial Action

**ERISA** shall mean the US Employee Retirement Income Security Act of 1974.

**ERISA Affiliate** shall mean, with respect to any entity, any trade or business (whether or not incorporated) (a) under common control within the meaning of Section 4001(b)(1) of ERISA with such entity or (b) which together with such entity is treated as a single employer under Section 414(t) of the US Code.

**Estimated Net Debt** shall mean Seller's estimate of the Net Debt as at the Effective Time prepared in good faith and on a basis consistent with the Preparation Guide.

**Estimated Net Working Capital** shall mean Seller's estimate of the Net Working Capital as at the Effective Time prepared in good faith and on a basis consistent with the Preparation Guide.

**EU** shall be the European Union and its member states.

**Excluded Asset** shall mean (a) the equity interests of the Excluded Subsidiaries after giving effect to the Separation, (b) the Excluded Businesses after giving effect to the Separation, (c) any asset owned, used or held for use by Seller or any of its Subsidiaries not used, according to the principles set forth in the SID, in the conduct of the Business, and (d) any Non-transferring JV.

**Excluded Benefit Plan** shall mean any Employee Benefit Plan or Employee Benefit Arrangement (a) that is not sponsored or maintained by a Target Group Company or Dedicated JV Subsidiary (including, for the avoidance of doubt, the Clariant Long-term Incentive Plan (CLIP)) or (b) with respect to which any Target Company or Dedicated JV Subsidiary has not made or is not required to make payment, transfer or contributions.

**Excluded Business Portion** shall mean, with respect to any Shared Contract, all rights and obligations under such Shared Contract other than the Business Portion of such Shared Contract.

**Excluded Liability** shall mean, (a) any and all Liabilities related to the Excluded Businesses whether arising before, on or after the Closing Date, (b) any and all Liabilities related to any Excluded Subsidiary or Non-transferring JV whether arising before, on or after the Closing Date, (c) any and all Liabilities related to the Excluded Assets whether arising before, on or after the Closing Date, (d) any and all Liabilities arising out of (1) a Third Party Claim that any Separation Transaction has been performed in violation or breach of applicable Law or Contract or (2) any Separation Clean Up Activity to the extent not completed prior to Closing, (e) the Indemnified Taxes, (f) the following specific Liabilities related to the Business or the Transactions: (i) any and all Liabilities relating to an Excluded Benefit Plan, including any Liabilities under Seller's long-term incentive plans and short-term incentive plans, (ii) any and all Liabilities relating to Pre-Closing Bonus Amounts, (iii) all Liabilities relating to any defined benefit plan or arrangement or other DBO that are not Acquired DBO, (iv) all Liabilities with respect to retiree welfare benefits maintained in the US or Canada, other than Acquired Retiree Benefits Liability, and (v) all Liabilities arising out of withdrawals on or prior to Closing by Seller or its Subsidiaries (or as a result thereof) from any multiemployer plan in connection with the Separation or Closing, (g) any and all Losses arising out of Known Proceedings, (h) any Environmental Losses, and (i) any and all Losses arising out of the matter disclosed in Section 9 of the Disclosure Letter concerning title to the site in Naas, Ireland.

**Fairly Disclosed** shall mean a disclosure of a fact or circumstance in a manner which allowed or would reasonably be expected to allow an experienced business person to reasonably identify and assess the impact of such fact or circumstance on any of the Target Group Companies and the Business.

**FCPA** shall mean the US Foreign Corrupt Practices Act.

**Final Net Debt** shall mean the Net Debt as set out in the Final Completion Accounts.

**Final Net Working Capital** shall mean the Net Working Capital as set out in the Final Completion Accounts.

**Fundamental Representations** shall mean the representations and warranties in Sections 1 (Ownership), 2 (Shareholder Loans), 3 (Organization), 4 (Authorization), 5 (Subsidiaries) and 23(a) (Title to Assets) of Annex 4.1.

**GAAP** shall mean US Generally Accepted Accounting Principles.

**German Real Property** shall mean the owned real property located in Lahnstein, Germany, registered with the land register of the Amtsgericht Lahnstein (Grundbuch Oberlahnstein) under page no. 8536, and the owned real property located in Ahrensburg, Germany, registered with the land register of the Amtsgericht Ahrensburg (Grundbuch Ahrensburg) under page no. 3405.

**Governmental Authority** shall mean any foreign, domestic, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other body or agency, or any political or other subdivision, department or branch of any of the foregoing.

**Governmental Requirement** shall mean any lawful judicial or administrative decree, ruling, judgment, injunction or order or written notice brought, made or issued by a Governmental Authority to or against Buyer of any of its Affiliates.

**Hazardous Materials** shall mean any substance, material, or waste which is regulated or could give rise to liability under any Environmental Law, including any (a) asbestos or asbestos-containing materials, (b) petroleum or petroleum-containing or petroleum-derived materials, (c) radiation or radioactive materials, (d) harmful biological agents, including mold present at levels or in conditions that causes adverse health effects, (e) polychlorinated biphenyls, and (f) any material, substance, or waste which is defined as a "hazardous waste," "hazardous material," "regulated substance," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "pollutant," "toxic waste," "toxic substance" or similar term under any Environmental Law.

**IFRS** shall mean the International Financial Reporting Standards as promulgated by the International Accounting Standards Board.

**Indemnified Sites** shall mean all real property owned, leased or subleased or encumbered with a similar right to use at Closing (including the Real Property) by the Target Group, the Dedicated JV Subsidiaries or the Current Subsidiaries relating to the Business, except for any Real Property which is not an Indemnified Site pursuant to Section 5.4.20, provided that any real property at a site set forth on Annex 7.1.9(g) shall always remain an Indemnified Site.

**Information Systems** shall mean all computer hardware, databases and data storage systems, computer, data, database and communications networks (other than the Internet), architecture interfaces and fire-walls (whether for data, voice, video or other media access, transmission or reception) and other apparatus used to create, store, transmit, exchange or receive information in any form.

**Intellectual Property** shall mean all of the following items: (a) all inventions, all improvements thereto, and all patents, patent applications, and patent disclosures, together with all provisionals, reissuances, continuations, continuations in part, divisionals, revisions, extensions, and reexaminations thereof; (b) all trade-marks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof, and all applications, registrations, and renewals in connection therewith; (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith; (d) computer software (including data and related documentation); (e) all rights in or to any technology; and (f) all internet domain names.

**Inventory** shall mean all raw materials, work-in-progress, finished goods, traded goods, parts, spare parts, replacement parts, packaging materials, goods in transit and consignment stock.

**IRS** shall mean the US Internal Revenue Service.

**JV Adjustment** shall mean an amount equal to the net proceeds received by Seller or its Affiliates attributable to the sale of any JV Shares; provided that in no event shall such amount be less than the fair market value of any such JV Shares at the time of the sale of such JV Shares (such fair market value to be reasonably agreed to by the Parties, or, if the Parties are unable to agree on such value, the fair market value shall be determined in a manner consistent with the procedures set forth in Section 1(c) of Annex 2.4 Part 1).

**Key Persons** shall mean all level 1 and 2 employees (i.e., the head of Seller's business unit Masterbatches minus one level) within the Business.

**Know How** shall mean any information in any form relating to the Business that: (i) is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible within the circles that normally deal with the kind of information in question; (ii) has commercial value because it is secret; and (iii) has been subject to reasonable steps under the circumstances, by the Person(s) lawfully in control of such information, to keep it secret.

**Known Proceedings** shall mean each matter set forth on Annex 4.1.17.

**Law** shall mean any and all (a) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations, and municipal by-laws, (b) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards of any Governmental Authority, and (c) policies, guidelines and protocols to the extent they have force of law.

**Leases** shall mean the Contracts pursuant to which Leased Real Property is leased, subleased or, licensed or otherwise used or occupied.

**Liability** shall mean any debts, liabilities, guarantees, assurances and commitments, whether fixed, contingent or absolute, asserted or unasserted, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, in each case regardless of whether the same would be required by IFRS to be reflected in financial statements or disclosed in the notes thereto.

**Lien** shall mean any lien, encumbrance and other security interest, mortgage, pledge, hypothecation, deed of trust, right of first refusal, claim, easement, servitude, proxy, title defect, title retention agreement, voting trust agreement, transfer restriction, community property interest, option, charge or similar restrictions or limitations, irrespective of whether such Lien arises under a Contract, by operation of Law or by means of a judgment or decree.

**Losses** shall mean any losses, Taxes, damages, costs, penalties, fines, suits, actions, judgments, awards or expenses (including reasonable attorneys' fees) but excluding any punitive damages and, to the extent not proximately caused (adäquat kausal verursacht), any indirect or consequential damages.

**Made Available** shall mean the posting of such document or item of information to the "[10862] INDIGO" virtual data room hosted by Imprima iRooms Limited and established by Seller in connection with the Transactions and accessible by Buyer and its representatives at least two Business Days prior to the date of this Agreement.

**Marketing Period** shall mean the period of 15 consecutive Business Days after the date of this Agreement throughout and at the end of which (a) Buyer shall have all of the Required Information and (b) the conditions set forth in Section 3.2 shall be satisfied (not including conditions which, by their nature, can only be satisfied at Closing) and nothing has occurred and no condition exists that would cause any of the conditions set forth in Section 3.2 to fail to be satisfied assuming Closing were scheduled at any time during such period; provided that (i) July 3, 2020, November 26, 2020 and November 27, 2020 shall not constitute Business Days (but for the avoidance of doubt, the exclusion of such dates shall not restart the Marketing Period, (ii) if the Marketing Period has not been completed on or prior to December 20, 2019, such 15 consecutive Business Day period shall not commence prior to January 3, 2020, (iii) if the Marketing Period has not been completed on or prior to August 21, 2020, such 15 consecutive Business Day period shall not commence prior to September 9, 2020, and (iv) the Marketing Period shall not be deemed to have commenced if, prior to the Closing Date, (w) the Interim Financial Statements included in the Required Information become stale under Regulation S-X, in which case the Marketing Period shall not be deemed to commence unless and until the earliest date on which Seller has furnished Buyer with updated Required Information, (x) PricewaterhouseCoopers AG, Basel, shall have withdrawn in writing its audit report with respect to any of the Annual Financial Statements, in which case the Marketing Period shall be deemed not to commence unless and until, at the earliest, a new unqualified audit report is issued with respect to such financial statements by PricewaterhouseCoopers AG, Basel, or another nationally-recognized independent public accounting firm, (y) any of the historical financial statements of the Company that are included in the Required Information shall have been restated or Seller, the Company or any of their respective Subsidiaries shall have publicly announced that a restatement of any historical financial statements of the Company is required, or the board of directors (or similar governing body) of Seller, the Company or any of their respective Subsidiaries shall have determined to restate historical financial statements of the Company, in which case the Marketing Period shall not be deemed to commence unless and until, at the earliest, such restatement has been completed or the board of directors (or similar governing body) of Seller subsequently concludes that no such restatement shall be required in accordance with GAAP or (z) the Required Information, taken as a whole, contains any untrue statement of a material fact or omits to state any material fact, in each case with respect to the Company, necessary in order to make the statement contained in the Required Information, in the light of the circumstances under which it was made, not materially misleading, the Marketing Period shall not be deemed to commence unless and until the Required Information is updated or supplemented such that it does not contain any untrue statement of a material fact or omit to state any material fact, in each case with respect to the Company, necessary in order to make the statement contained in the Required Information, in the light of the circumstances under which it was made, not materially misleading. If Seller reasonably believes (in good faith) that the Marketing Period has commenced, it may deliver to Buyer a written notice to that effect (stating when it believes such period commenced), in which case, the "Marketing Period" shall be deemed to have commenced on the date specified in such notice, unless Buyer reasonably believes (in good faith) that the Marketing Period has not commenced and, within five Business Days after the delivery of such notice by Seller, Buyer delivers a written notice to Seller to that effect (stating with specificity why the Marketing Period has not commenced).

**Masterbatch Seller** shall mean each of Seller, German Seller, Peruvian Seller and US Seller.

**Material Adverse Effect** shall mean any Effects that, individually or in the aggregate, has, or would reasonably be expected to have, a material adverse effect on (a) the assets, liabilities, condition (financial or otherwise), business or results of operations of the Business, taken as a whole, or (b) the ability of Seller (or its applicable Subsidiaries) to consummate the Transactions in a timely manner; provided, however, that with respect to clause (a) no Effect, to the extent resulting or arising from the following, either alone or in combination, shall be deemed to constitute a Material Adverse Effect: (i) any changes or global economic conditions, (ii) conditions (or changes therein) in any industry or industries or market in which the Business operates, (iii) general legal, Tax and/or regulatory conditions affecting financial, credit or capital market conditions, or (iv) Effects arising out of changes in geopolitical conditions, acts of terrorism (other than cyber-terrorism) or sabotage, war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, weather conditions or other similar force majeure events, including any material worsening of such conditions threatened or existing as of the date of this Agreement (other than any of the foregoing to the extent that it (x) causes any direct damage or destruction, or renders physically unusable or inaccessible, any facility or property of the Business or (y) adversely impacts the Business in a disproportionate manner relative to other participants in the industry of the Business).

**Material Customer** shall mean any customer of the Business with a turnover exceeding CHF 1,000,000 per annum.

**Material Supplier** shall mean any supplier to the Business with a turnover exceeding CHF 500,000 per annum.

**Material Customer Agreements** shall mean all customer Contracts pertaining to the Business with a turnover exceeding CHF 1,000,000 per annum.

**Material Supply Agreements** shall mean all supply Contracts pertaining to the Business with a turnover exceeding CHF 500,000 per annum.

**Merger Control Laws** shall mean Laws designed to govern foreign investment or competition, or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

**Net Debt** shall mean the net of Cash and Debt (each as determined in accordance with the Preparation Guide).

**Net Working Capital** shall mean the net working capital determined in accordance with the Preparation Guide.

**Net Working Capital Target Amount** shall mean CHF 138.2 million, to be converted into USD at the spot rate on the Closing Date using the same data source that the Seller uses for its normal month end accounting.

**OFAC** shall mean the US Department of the Treasury, Office of Foreign Assets Control.

**Ordinary Course** shall mean the ordinary and usual course of normal day-to-day operations of the Business, consistent with past custom and practice (including with respect to quantity and frequency).

**Permit** shall mean all permits, licenses, certifications, franchises, orders and other authorizations, consents, clearances, and approvals of a Governmental Authority necessary to conduct the Business (including with respect to the Owned Real Property and the Leased Real Property) in the Ordinary Course and in compliance with all applicable Laws.

**Permitted Liens** shall mean (a) statutory Liens for current Taxes or other governmental charges not yet due and payable as of the Closing Date or the amount or the validity of which is being contested in good faith and for which adequate accruals or reserves have been established on the Annual Financial Statements and the Interim Financial Statements; (b) mechanics', carriers', workers', repairers' and similar statutory Liens arising or incurred in the Ordinary Course for amounts which are not delinquent, the validity of which is being contested in good faith or for which adequate accruals or reserves have been established on the Annual Financial Statements and the Interim Financial Statements; (c) other Liens arising pursuant to liabilities incurred in the ordinary course or easements, title defects, covenants or restrictions which: (i) do not materially affect any assets of the Target Group Companies or the Dedicated JV Subsidiaries and (ii) do not materially interfere with the conduct of the Business as presently conducted, and; (d) any Liens or privilege vested in any lessor for rent or other obligations of the Target Group Companies or the Dedicated JV Subsidiaries under any Contracts that relate to the lease of tangible assets of the Target Group Companies or the Dedicated JV Subsidiaries arising in the ordinary course of business, and (e) with respect to the German Property Sale, the Liens assumed by the Buyer (as defined in the German Property Sale Agreement) pursuant to Section 4.2 (a) of the German Property Sale Agreement.

**Person** shall mean any natural person, corporation, limited liability company, general or limited partnership, trust, unincorporated organization, Governmental Authority, joint venture or any other natural person or entity doing business.

**PKR** shall mean Pakistani Rupees.

**Post-Separation Agreements** shall mean the Contracts entered into in connection with the Separation between Seller or one or more of its Affiliates (other than any Target Group Company or Dedicated JV Subsidiary), on the one hand, and one or more Target Group Companies or Dedicated JV Subsidiaries, on the other hand, in each case, entered into and in accordance with the Separation Concept, the SID and this Agreement, in substantially the same form as the Contracts set forth on Annex 6.1(g).

**Pre-Closing Bonus Amounts** shall mean with respect to each Employee Benefit Plan or Employee Benefit Arrangement (other than an Excluded Benefit Plan) that is a bonus or incentive plan, program, or arrangement, the amount of the bonus or incentive that is payable for the performance period in which the Closing Date occurs multiplied by a fraction, the numerator of which is the number of days in such performance period that occurred on and prior to the Closing Date and the denominator of which is the total number of days in such performance period.

**Regulation S-X** shall mean Regulation S-X promulgated by the SEC.

**Regulatory Documentation** shall mean all regulatory documentation pertaining to the Business, including any required for the post-Closing operation thereof, whether in the possession of Seller, its representatives or contractors, including (a) all submissions, notifications, applications, certificates, material correspondence, reports, clinical data, protocols, investigator brochures or other documents to or from any Governmental Authority with regard to the products of the Business and all Permits, (b) all internal and external inspection or audit reports, including pertaining to any facility utilized in the manufacturing or development of any product, (c) all documents related to any alleged non-compliance (including pertaining to any facility utilized in the manufacturing or development of the products) or product complaint matters, (d) all adverse event reports for the product, and (e) all backup and supporting documents with respect to any of the foregoing.

**Release** shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, depositing or dumping of a Hazardous Material on or into the Environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material).

**Remedial Action** shall mean:

- (a) the carrying out of such works as are reasonably necessary to investigate, assess, monitor, remediate, abate, contain, control or treat the effects of any harm to the Environment or human health as a result of Hazardous Materials at, on, under, in or which have emanated from any Indemnified Site where, and to the extent, such Hazardous Materials existed at, in, on or under or were emanating from any Indemnified Site prior to closing; and
- (b) the making of subsequent inspections and operation maintenance of remediation works from time to time for the purpose of keeping under review the sufficiency of the works under (a) above.

**Restricted Business** shall mean any business competing with the Business by (a) producing, or having produced by a third party, and selling, or (b) distributing on behalf of a third party (i) masterbatches containing colorants or (ii) masterbatches containing a combination of colorants and functional additives, in each case for use in the plastics processing industry; For the avoidance the doubt, the development, production and distribution of samples shall not be restricted.

**Restricted Period** shall mean the three-year period commencing on the Closing Date.

**Sanctioned Person** shall mean any Person, organization, or vessel:

- (a) Designated or listed on OFAC's Specially Designated Nationals and Blocked Persons List, the EU Consolidated list of persons, groups and entities subject to EU financial sanctions, or any other restricted party list issued under Economic Sanctions Laws or Trade Control Laws;
- (b) that is, or is part of, a government of a Sanctioned Territory;
- (c) that is, directly or indirectly, owned or controlled by, or acting on behalf of, any of the foregoing;
- (d) located within, residing in, or operating within a Sanctioned Territory; or
- (e) otherwise targeted under any Economic Sanctions Laws or Trade Control Laws.

**Sanctioned Territory** shall mean any country, region or other territory that is or has been during the last five years subject to a comprehensive embargo under any Economic Sanctions Laws.

**SEC** shall means the US Securities and Exchange Commission.

**Seller's Best Knowledge** shall mean the actual knowledge of each Person listed in the table below:

**Function and Name**

Tax - Gion Job

IPR - Norbert Schwenk

Environment - Joachim Eigenmeier

Pension | HR - Klementina Pejic

Litigation - Alfred Munch



Compliance - Sandra Middel  
Patrick Jany  
Bernd Hoegemann  
Mauricio Tamura  
Martin Seifert

**Separation Transaction(s)** shall mean each step or transaction of the Separation, as described in Section 6.

**Shared Contract** shall mean any Contract pursuant to which both the Business and any Excluded Businesses receive any material benefit or have any material obligation.

**SID** shall mean the seller information document Made Available under reference no. 16.01.02.01.

**Solvent** shall mean that, as of any date of determination, such Person will be able to pay its Liabilities, as they mature.

**Subsidiary** shall mean, with respect to any Person, any corporation, limited liability company, partnership or other organization, whether incorporated or unincorporated, of which (a) at least a majority of the out-standing shares of capital stock of, or other equity interests, having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries or (b) with respect to a partnership, such Person or any other Subsidiary of such Person is a general partner of such partnership.

**Tax(es)** shall mean all tax liabilities, including income (personal or corporate), capital, stamp duties (both on the issuance and on the transfer or securities), withholding, value added, real estate gains, transfer, property and land, business, customs duties, gross receipts, license, payroll, employment, excise, severance, occupation, premium, windfall profits, environmental, franchise, profits, social security (or similar), unemployment, disability, personal property, escheat, unclaimed or abandoned property, sales, use, registration, alternative or add-on minimum, estimated and all other taxes, duties, levies or imposts of any kind whatsoever payable to any competent Tax Authority as well as any related interest, penalties, costs, additions and expenses thereto, whether disputed or not.

**Tax Audit** shall mean any audit, examination, investigation, inquiry or other proceedings initiated by the relevant Tax Authority with regard to Tax(es).

**Tax Authority** shall mean any taxing or other authority competent to assess, impose, administer, collect or reimburse any Tax(es).

**Tax Return** shall mean any returns (including informational returns), reports (including transfer pricing documentation), declarations, statements and forms that are required to be filed with any Governmental Authority or Tax Authority for any Taxes payable or reimbursable.

**Trade Control Laws** shall mean all US and non-US Laws relating to export, reexport, transfer, import controls and anti-boycott.

**Transactions** shall mean the transactions contemplated by this Agreement.

**Transferred SU Employees** shall mean the SU Employees who have been nominated by Seller for employment with a Target Group Company and have accepted such employment with a Target Group Company.

**Transitional Services Information** shall mean each of the following: (a) access to the appropriate personnel and information related to the Business' financial statement close process (encompassing monthly, interim and annual periods); (b) an example extract from the Business' monthly financial reporting (MFR) (excluding MFR as of January 31) with field definitions for each of the Target Group Companies and the Dedicated JV Subsidiaries and, with respect to the Business (including such business of Seller or its Subsidiaries to the extent carried out in India), Clariant Chemicals (India) Limited; (c) an updated list of Business Employees; and (d) all other information related to the Business necessary to prepare to receive the Transitional Services and transfer off of such services.

**Transitional Services Planning Team** shall mean each designee of Buyer and of Seller listed in the table below, as may be updated from time to time, and shall include any other designee of either Buyer or Seller upon the prior written consent of the Party, such consent not to be unreasonably withheld or delayed.

Role	Functions	Seller	Buyer
Contract Manager (TSA Manager)		Martin Seifert Michael Trimborn	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
Functional Service Manager	Finance	Marc Danner	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	IT	Marc Mario Weilert	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	HR	Leonardo Marinelli	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	GPS	Gregor Hain	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	CSRA	Joachim Eigemeier	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	GBS	Dirk Hamm Frederic Stalder	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	GBS - Logistics	Serena Guo	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.
	GBS - SSCs	Justyna Sapieja	Buyer to provide name of designee(s) within 30 (thirty days of the date of this Agreement.

**Treasury Regulations** shall mean the US Treasury regulations promulgated under the US Code.

**US** shall mean the United States of America.

**US Code** shall mean the US Internal Revenue Code of 1986.

**USD** shall mean United States Dollars.

**VAT** shall mean any value added Tax.

**Xerox Provisions** shall mean Sections 3.4(g) (solely with respect to the proviso therein), 3.4(h) (solely with respect to the references to Sections 3.4(g), 3.4(h), 5.1.4(d), 8.4, 8.7 and 8.12), 8.4, 8.7 and 8.12 of this Agreement and with respect to any of the foregoing sections, any of the defined terms used therein.

## Annex 4.1 | Representations of Seller

### 1. Ownership

- (a) (i) Seller is the sole legal and beneficial owner of the Shares, and (ii) US Seller is the sole legal owner of the equity interests of the US Target (the **US Target Shares**). All of the Shares and the US Target Shares are free and clear of any Liens, are validly issued and fully paid in up to their par value, if any, and represent the entire equity interests of the Company and US Target, as applicable. There are no shares of capital stock, voting securities or other equity securities of the Company or the US Target issued, reserved for issuance or outstanding, other than the Shares and the US Target Shares, as applicable. At Closing, (y) Seller will transfer valid title to, and Buyer will acquire, all the Shares, free and clear of all Liens, and (z) US Seller will transfer valid title to, and Buyer or its designated Affiliate will acquire, all the US Target Shares, free and clear of all Liens.
- (b) There are no shares of capital stock, voting securities or other equity securities of the Company or US Target issued, reserved for issuance or outstanding, other than the Shares and the US Target Shares, as applicable. There are no outstanding or authorized options, warrants, rights (including repurchase rights, rights of first refusal, redemption rights and “tag-along” and “drag-along” rights), stock-settled performance units, undertakings, calls, subscriptions, claims of any character, Contracts, obligations, convertible or exchangeable securities, or other commitments, contingent or otherwise, relating to the equity interests in the Company or US Target or rights relating to the Shares or the US Target Shares pursuant to which the Company or US Target are or may become obligated to (i) issue, deliver, redeem, acquire or sell, or caused to be issued, delivered, redeemed, acquired or sold, any equity interests or any securities convertible into, exchangeable for, or evidencing the right to subscribe for, any equity interests or (ii) provide funds to or make any equity investment in any other Person which is not a Target Group Company. There is no outstanding indebtedness that could convey to any Person the right to vote or that is convertible into or exercisable for any equity interests of the Company or US Target. There are no stockholder Contracts, proxies or other Contracts or undertakings in effect with respect to the voting, dividend rights or transfer of any of the Shares or the US Target Shares.

### 1. Shareholder Loans

At Closing, the Shareholder Loans that will be set forth in Annex C (as updated prior to Closing) will be outstanding and enforceable subject to applicable bankruptcy, reorganization, insolvency or other Laws affecting the enforcement of creditors' rights generally (the **General Enforceability Exceptions**) or of shareholder loans in particular. Each such Shareholder Loan will be entered into on terms that are arm's length, contain interest rates that fall within the statutory safe harbor and, for the avoidance of doubt, the debt to equity ratio of each party to a Shareholder Loan does not violate applicable thin-cap rules.

### 2. Organization

- (a) Each Masterbatch Seller is duly incorporated, organized and validly existing under the applicable Laws of its country of incorporation or organization and has the full corporate or applicable power and authority to own or use its assets and properties and to conduct its business as currently conducted.

- (b) Each Masterbatch Seller is duly qualified to do business, and in good standing, in each jurisdiction in which the character of the properties owned or leased by it or in which the conduct of the Business requires it to be so qualified, except where the failure to be so qualified or to be in good standing would not individually or in the aggregate, have, or would reasonably be expected to have, a Material Adverse Effect.
- (c) Seller has Made Available copies of (i) the articles of association of the Company and (ii) the bylaws of US Target. Such documents have not been subsequently amended or rescinded and are in full force and effect. The Company and US Target are not in material violation of any of the aforementioned documents.

### **3. Authorization**

- (a) Seller has the right and capacity to execute this Agreement, and Seller, or its applicable Affiliates, have the right and capacity to execute each Ancillary Agreement to which it is a party and to perform its obligations hereunder and thereunder. When executed, this Agreement and each Ancillary Agreement to which Seller, or its applicable Affiliates, are a party will constitute valid and binding obligations of each Masterbatch Seller, or Seller's applicable Affiliates, enforceable against such Masterbatch Seller or Seller's applicable Affiliates, in accordance with their terms, subject to the General Enforceability Exceptions. The execution, delivery and performance by each Masterbatch Seller of this Agreement and by Seller or its applicable Affiliates of each Ancillary Agreement to which they are a party and the consummation by each Masterbatch Seller or Seller's applicable Affiliates of the Transactions or transactions contemplated thereby have been duly authorized by all necessary corporate or other applicable action on the part of each Masterbatch Seller and Seller's applicable Affiliates.
- (b) The execution, delivery and performance by each Masterbatch Seller of this Agreement and by Seller or its applicable Affiliate of each Ancillary Agreement and the consummation by each Masterbatch Seller and Seller's Affiliates, as applicable, of the Transactions or transactions contemplated by any Ancillary Agreement do not and will not (i) conflict with or violate any Masterbatch Seller's organizational or governing documents, (ii) conflict with or violate any Law applicable to the Target Group, the Dedicated JV Subsidiaries or the Business, or (iii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, or, except for the Governmental Approvals, require any consent or notice with respect to, any Material Contract or Permit, except for any such conflict, violation, breach, default, loss, right or other occurrence that would not, individually or in the aggregate, reasonably be expected to have a material and adverse effect the Target Group, the Dedicated JV Subsidiaries or the Business.

### **4. Subsidiaries**

- (a) Seller is, or will be at Closing with respect to the NewCo Subsidiaries, the beneficial owner of all of the equity interests in the German Seller, the Peruvian Seller and Target Subsidiaries (other than the minority equity interests held by the Pakistan Sellers in Pakistan Target as set forth in Annex B-2(i) (the **Pakistan Shares**)), which are, or will be at Closing (including the Pakistan

Shares), respectively, free and clear of any Liens. All of the shares of the Current Subsidiaries are validly issued and fully paid to their par value, if any, and represent the entire equity interests of the Current Subsidiaries (the **Current Subsidiary Shares**).

- (b) Subject to the completion of the Separation and to the completion of all required registration or filing procedures, at Closing, the Company will directly or indirectly own all of the equity interests in the Target Subsidiaries (other than the Pakistan Shares) (such shares, including the Pakistan Shares, the **Target Subsidiary Shares**), which are, and will be at Closing, free and clear of any Liens. The Company is the sole legal owner of the equity interests in each of the Dedicated JV Subsidiaries as set forth in Annex B-3 (the **JV Shares**), which are, and will be at Closing, free and clear of any Liens. All of the Target Subsidiary Shares are (or, with respect to the NewCo Subsidiaries will be upon issuance) and the JV Shares are validly issued and fully paid to their par value, if any, and together with the equity interests owned by the minority shareholders in the Dedicated JV Subsidiaries as set forth in Annex B-3, represent the entire equity interests of the Target Subsidiaries.
- (c) There are no shares of capital stock, voting securities or other equity securities of the Target Subsidiaries or the Dedicated JV Subsidiaries issued, reserved for issuance or outstanding, other than the Target Subsidiary Shares and the JV Shares. There are no outstanding or authorized options or rights relating to the equity interests in the Target Subsidiaries or the Dedicated JV Subsidiaries pursuant to which the Target Subsidiaries or the Dedicated JV Subsidiaries are or may become obligated to (i) issue, deliver, redeem, acquire or sell, or caused to be issued, delivered, redeemed, acquired or sold, any equity interests or any securities convertible into, exchangeable for, or evidencing the right to subscribe for, equity interests. There is no outstanding indebtedness that could convey to any Person the right to vote or that is convertible into or exercisable for any equity interests of the Target Subsidiaries or the Dedicated JV Subsidiaries. There are no stockholder Contracts or proxies in effect with respect to the voting, dividend rights or transfer of any of the Target Subsidiary Shares.
- (d) At Closing, the Target Subsidiaries and the Dedicated JV Subsidiaries (i) will be duly incorporated, organized and validly existing under the applicable Laws of their respective country of incorporation or organization, (ii) will have the full corporate or other applicable power and authority to carry on their businesses as currently conducted, and (iii) will be duly qualified to do business, and in good standing, in each jurisdiction in which the character of the respective properties owned or leased by them or in which the conduct of its business requires it to be so qualified, except where the failure to be so qualified or to be in good standing would not individually or in the aggregate, have, or would reasonably be expected to have, a Material Adverse Effect.
- (e) None of the Target Subsidiaries or the Dedicated JV Subsidiaries are in material violation of any of their certificates of incorporation or bylaws or equivalent organizational documents and each of the Target Subsidiaries and the Dedicated JV Subsidiaries is Solvent.

## **5. Deal Financial Statements**

The Deal Financial Statements have been prepared in good faith and in accordance with the Accounting Principles. The Deal Financial Statements reasonably present, in all material respects, based on the

assumptions and limitations stated therein and subject to completion of the Separation, the financial positions, results of operations, net assets, and cash flows of the Business as at their respective record dates. Buyer acknowledges that the materiality levels applied to the financial data used for purposes of establishing the Deal Financial Statements are different from those that may have been applied had the Business, as at the respective record dates, been effectively operated on a stand-alone basis.

## **6. Conduct of Business**

- (a) Since December 31, 2018, subject to the Separation, (i) the Business has been carried out in the Ordinary Course and (ii) there have been no Effects that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (b) Since December 31, 2018, other than in connection with the Separation (completed in accordance with the terms of this Agreement and the Separation Concept), the Company, the Existing Business Subsidiaries, the Dedicated JV Subsidiaries and the Target Subsidiaries:
  - 1. have not granted any purchase option or conversion rights on their equity;
  - 2. have not, with respect to the Business, other than (a) in the Ordinary Course, (b) as set forth herein or (c) as required to comply with mandatorily applicable Laws, purchased, acquired, sold, assigned, transferred (including transfers to Seller or its Affiliates), licensed or disposed of any tangible or intangible assets or properties material to the Business to any Person which is not a Target Group Company;
  - 3. have not engaged in a merger, demerger, spin-off or similar transaction with any Person which is not a Target Group Company; and
  - 4. have not agreed to do any of the foregoing.

## **7. Taxes**

- (a) All Tax Returns required to be filed by or with respect to the Target Group or otherwise with respect to the Business have been timely filed. All such Tax Returns (i) have been prepared in the manner required by applicable Law and (ii) are true, correct and complete in all material respects.
- (b) All Taxes due and owing by or with respect to the Target Group or otherwise with respect to the Business (whether or not shown on any Tax Return) have been paid. The reserves for Taxes of the Target Group or otherwise with respect to the Business are sufficient for all accrued but unpaid Taxes of the Target Group and with respect to the Business. All Taxes required to be withheld, collected or deposited and paid over to the appropriate Tax Authorities by the Target Group or otherwise with respect to the Business in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party have been properly withheld, collected or deposited and paid over (or are properly being held for such timely payment) in accordance with applicable Law, and all information reporting and backup withholding requirements have been satisfied, including maintenance of required records with respect thereto.

- (c) Each Target Group Company has complied with all statutory requirements, regulations, notices, orders, directions and conditions relating to Taxes and to maintaining and preserving complete, accurate and up to date records in respect of Tax.
- (d) There are no ongoing, pending or, to the Seller's Best Knowledge, threatened Tax Audits with respect to any Target Group Company or otherwise with respect to the Business, and there are no Tax assessments or deficiencies with respect to any Target Group Company or otherwise with respect to the Business that have not been paid, settled or otherwise resolved in full. No jurisdiction in which a Target Group Company does not pay Taxes or file Tax Returns, or in which the Current Group does not pay Taxes or file Tax Returns with respect to the Business, has claimed that a Target Group Company or the Business is or may be subject to taxation by that jurisdiction, including a duty to withhold or collect and remit Taxes to such jurisdiction. There are no waivers or extensions of applicable statutes of limitations with respect to Taxes for any year with respect to the Target Group or the Business. There are no Liens for Taxes upon any of the assets of the Target Group or with respect to the Business, other than statutory Liens for Taxes that are not yet due and payable.
- (e) There is no pending request for any Tax ruling or similar determination by or before any Tax Authority relating to Taxes of the Target Group or the Business (except as disclosed in writing prior to Closing), and no power of attorney, currently in force, that has been executed by or on behalf of any Target Group Company or with respect to the Business with respect to any matter relating to Taxes will be binding on the Target Group or the Business after Closing.
- (f) Seller and each of the Target Group Companies is in compliance with all Tax rulings obtained from any Tax Authority.
- (g) Each of the Target Group Companies, as may be applicable, is duly registered for purposes of VAT and has complied in all material respect with all requirements relating to VAT.
- (h) None of the Target Group Companies is a party to or bound by, and the Business is not otherwise subject to, any Blocking Periods or Tax rulings or any Tax allocation, Tax sharing, Tax abatement, Tax holiday, Tax reduction or other similar Contract or arrangement with a Tax Authority, except for any such Contract or arrangement that is specifically disclosed in Annex 5.3.2(a). No Target Group Company (i) has been a member of any affiliated, consolidated, combined, unitary, fiscal unity, VAT or other similar Tax group or (ii) has any liability for the Taxes of any Person (other than Target Group Company) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or non-US law), as a transferee or successor, by contract, or otherwise.
- (i) None of the Target Group Companies has (i) failed to file any disclosure pursuant to Section 6662 of the US Code or comparable provisions of state, local or foreign Tax Law that would otherwise prevent the imposition of penalties with respect to any Tax reporting position taken on any Tax Return if such disclosure were properly filed, (ii) engaged in a "reportable transaction," as defined in Treasury Regulation Section 1.6011-4(b), and (iii) been the "distributing corporation" or the "controlled corporation" (in each case, within the meaning of Section 355(a)(1) of the US Code) with respect to a transaction intended to be described in Section 355 of the US Code (in each case except as disclosed prior to Closing).



- (j) Each of the Target Group Companies has only ever been a resident for Tax purposes in its jurisdiction of organization and none of the Target Group Companies has a place of business, permanent establishment or taxable presence, in any jurisdiction outside the jurisdiction of its organization.
- (k) None of the Target Group Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (iii) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the US Code (or any corresponding or similar provision of state, local, or non-US income Tax Law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; or (v) prepaid amount received on or prior to the Closing Date.
- (l) Each of the Target Group Companies has collected all sales, value-added and use Taxes required to be collected, and has remitted such amounts to the appropriate Tax Authority, and has been furnished properly completed exemption certificates for any transaction exempt from such Taxes and has maintained all such records and supporting documents in the manner required by applicable Law.
- (m) None of the Target Group Companies is or was a "surrogate foreign corporation" within the meaning of Section 7874(a)(2)(B) of the US Code or should be treated as a US corporation under Section 7874(b) of the US Code.
- (n) None of the Target Group Companies has ever been a "controlled foreign corporation" within the meaning of Section 957 of the US Code. None of the Target Group Companies (other than US Seller) owns any asset that is a "United States real property interest" within the meaning of Section 897 of the US Code.
- (o) US Target is disregarded as an entity separate from US Seller for US federal income tax purposes.
- (p) None of the Target Group Companies has ever participated in an international boycott within the meaning of Section 999 of the US Code.
- (q) All material transactions entered into by any of the Target Group Companies are at arm's length and comply in all material respects with applicable transfer pricing Laws in all relevant jurisdictions, and the Target Group Companies have properly and timely documented its transfer pricing methodology in compliance with applicable Law (including Sections 482 and 6662 of the US Code).
- (r) No waivers of statutes of limitation with respect to the Taxes or Tax Returns in connection with any Target Group Company have been given or requested by any Target Group Company.
- (s) As at Closing, each Target Group Company, insofar as it is a member of any VAT group, and other than any VAT group consisting solely of Target Group Companies, has left any such VAT group of Seller and any of its Affiliates.

- (t) For the purpose of this Section 8 of Annex 4.1, reference to "Current Group," "Target Group" or "Target Group Company" shall include the Dedicated JV Subsidiaries.

## 8. Real Estate

- (a) Annex 4.1.9 contains a complete and correct list of all real property, including any comparable real property rights *in rem* on buildings, improvements and fixtures erected on leased land (e.g., *Baurecht, droit de superficie, in rem* building right), to be owned at Closing (including the German Real Property) by the Target Group, the Dedicated JV Subsidiaries or the Current Subsidiaries relating to the Business (the **Owned Real Property**). At Closing, the Target Group Companies and the Dedicated JV Subsidiaries will have good and valid title to the Owned Real Property (and with respect to the German Real Property, German Seller), free and clear of all Liens other than Permitted Liens. None of them (i) has leased, subleased, licensed or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof or (ii) is a party to any Contract, right of first offer, right of first refusal or option granting to any Person the right to purchase all or any portion of the Owned Real Property.
- (b) Annex 4.1.9 contains a complete and correct list of all material real property to be leased or subleased or encumbered with a similar right to use at Closing by the Target Group, the Dedicated JV Subsidiaries or the Current Subsidiaries relating to the Business (the **Leased Real Property**, and together with the Owned Real Property, the **Real Property**), together with a complete and correct list of all leases, subleases, licenses and other similar contracts related thereto, including all amendments thereof (the **Real Property Leases**). At Closing, the Target Group Companies and the Dedicated JV Subsidiaries will have a valid leasehold estate in the Leased Real Property, free and clear of all Liens other than the Permitted Liens. At the date of this Agreement, none of the Target Group Companies, the Dedicated JV Subsidiaries or the Current Subsidiaries has leased, subleased, licensed or otherwise granted to any Person the right to use or occupy such Leased Real Property.
- (c) The Leased Real Property, the Owned Real Property, and the buildings erected thereon (as applicable) have been properly maintained and are safe to use in accordance with their current use in their current condition and in good condition and repair (subject to normal wear and tear).
- (d) To Seller's Best Knowledge, at the date of this Agreement there are no existing or threatened restrictions to the continued use of the Leased Real Property and the Owned Real Property or any circumstances likely to result in such restriction.
- (e) To Seller's Best Knowledge, at the date of this Agreement none of the Target Group Companies, the Dedicated JV Subsidiaries or the Current Subsidiaries, as applicable, has received written notice from any Governmental Authority of any injunction, decree, order, writ or judgment outstanding or any action, suit or proceeding that would materially impair the ownership, lease, use or occupancy of the Leased Real Property or the Owned Real Property, or any portion thereof, or the operation of the Business as currently conducted thereon.

## 9. Intellectual Property and Know How

- (a) At Closing the Target Group will have the right to use all material Intellectual Property necessary for the conduct of the Business in the Ordinary Course as of the date of this Agreement.
- (b) At Closing, a Target Group Company will be the sole or joint legal or beneficial owner of the Intellectual Property listed in Annex 4.1.10(b) (the **Owned IP Rights**). To Seller's Best Knowledge, the Owned IP Rights are valid and enforceable.
- (c) At Closing, a Target Group Company will be the licensee of the Intellectual Property listed in Annex 4.1.10(c) (the **Licensed IP Rights**). The license agreements concerning the Licensed IP Rights are valid and enforceable.
- (d) In the past three years before the date of this Agreement, Seller has not received any written, or to Seller's Best Knowledge, oral, notifications challenging the validity, subsistence or enforceability of the Owned IP Rights. All registration fees for the Owned IP Rights have been paid when due, except for such fees in relation to Owned IP Rights that the Target Group Companies or the Current Subsidiaries have decided to abandon, cancel or allow to lapse.
- (e) To Seller's Best Knowledge, there has, in the past three years before the date of this Agreement, been no infringement by any third party of any of the Owned IP Rights. In the past three years before the date of this Agreement, Seller has not received any written notifications claiming that the Target Group Companies have infringed. In the past eighteen months prior to the date of this Agreement the Target Group Companies have not infringed, any registered third party Intellectual Property rights in connection with the conduct of the Business.
- (f) The Target Group Companies have taken commercially reasonable steps to protect their trade secrets and confidential information relating to the Business.
- (g) The Target Group Companies have complied in their conduct of the Business in all material respects and are currently conducting the Business in compliance in all material respects with all applicable Laws relating to the privacy, security or confidentiality of personal information.
- (h) Other than the Information Systems that are subject to the Transitional Services Agreement, the Information Systems used by the Target Group Companies are sufficient for the conduct of the Business in the Ordinary Course. The Target Group Companies use commercially reasonable means, consistent with the state of the art generally available to the public, to protect the security and integrity of all Information Systems they use in relation to the Business. The Target Group Subsidiaries have taken commercially reasonable steps to provide for archival, back-up, recovery and restoration of their material business data relating to the Business.
- (i) To the extent commercially reasonable, the Target Group Companies have kept the Know How confidential and have not disclosed Know How to a third party, except (i) in the Ordinary Course and (ii), with respect to any material piece of Know How, subject to written confidentiality and limited use obligations from such third party.

## 10. Environment

- (a) There are no contaminated sites (*Altlasten*), and there have been no Releases at, on, under or from any of the properties currently or formerly owned, operated, leased or otherwise used, by any of the Company, Current Subsidiaries or Target Subsidiaries that could give rise to a material liability with respect to the Business.
- (b) As of the date of this Agreement, none of Target Group Companies are liable for any investigation, clean-up, remediation or other response action regarding soil, surface water, surface or subsurface strata, soil gas, ground-water or other environmental media on, at, under or migrating from any of the properties, currently or previously, owned, operated, leased or otherwise used by the Target Group Companies with respect to any activities that have taken place or conditions existing or occurring on or prior to the date of this Agreement.
- (c) Each Target Group Companies is presently and has been for the past three (3) years before the date of this Agreement in compliance in all material respects with all Environmental Laws applicable to its properties or to its Business operations.
- (d) None of the Target Group Companies has generated, manufactured, refined, transported, treated, stored, handled, disposed of, released, transferred, produced or processed any Hazardous Materials at or upon its property except in compliance in all material respects with and in a manner that would not give rise to material liability under all applicable Environmental Laws.
- (e) In relation to the Business, in the past three years before the date of this Agreement, none of Target Group Companies has: (i) entered into or been subject to any order with respect to any Environmental Condition or any Environmental Law; (ii) received any written or to Seller's Best Knowledge, oral notifications with respect to any actual or alleged violation of or liability under Environmental Law; or (iii) been subject to or, to Seller's Best Knowledge, threatened with any action, suit, order or proceeding by a Governmental Authority or other Person with respect to any Environmental Condition or any violation of or liability under Environmental Law.
- (f) (i) At the date of this Agreement and for the past three (3) years, there are and have been in effect all Permits required under any Environmental Law that are or were necessary for each of the Target Group Companies' activities and operations at their properties and for each such company's Business operations at any other location; (ii) each of the Target Group Companies' activities and operations are and, in the past three (3) years before the date of this Agreement, have been in compliance in all material respects with all terms and conditions of such Permits; and (iii) any applications for renewal of such Permits have been submitted on a timely basis.
- (g) None of Target Group Companies has disposed of or arranged for the disposal, recycling, treatment or storage of any Hazardous Materials or wastes containing Hazardous Materials at any location in a manner that would give rise to a material liability under applicable Environmental Laws.
- (h) None of the Target Group Companies has assumed, undertaken, agreed to indemnify or otherwise become subject to any Liability of any other Person relating to or arising from any Environmental Law, except for cases where such Liability is imposed by statutory Law and not pursuant to any Contract.

- (i) The Seller and the Target Group Companies have Made Available copies of all material documents, records and information in their possession or control concerning any Environmental Conditions or potential Liability under Environmental Laws, including any Release or threat of Release of Hazardous Materials at, upon, under or from the Owned Real Property or Leased Real Property.

## **11. Product Registrations**

- (a) Products developed, manufactured, supplied, marketed or sold as part of the Business and requiring registration or other regulatory approvals according to applicable Laws are duly registered or approved (as applicable) and such registrations or approvals are complete, accurate and up-to-date in all material respects.
- (b) All products developed, manufactured, supplied, marketed or sold within the Business are developed, manufactured, supplied, marketed or sold (as applicable) in all material respects in accordance with the specifications and standards contained in relevant product registration documentations of the Company, the Existing Business Subsidiaries or the Target Subsidiaries in respect of the Business and in accordance with applicable Laws. Each product of the Business meets in all material respects the requirements of any applicable Permit.
- (c) All Regulatory Documentation required to be filed, maintained or furnished to any Governmental Authority or third party payor, with respect to the Business, has been so filed, maintained or furnished, and all such Regulatory Documentation was complete and accurate in all material respects on the date filed or furnished (or was timely corrected in or supplemented by a subsequent filing prior to the date of this Agreement).

## **12. Employment**

- (a) There are no employment or benefit Contracts, plans or arrangements, not previously disclosed, entitling any current or former officer, employee, director or consultant (or dependents of such Persons) to severance or other payments or benefits, accelerated time of payment or vesting due, or funding of or an increase in the amount of any compensation or benefit, by reason of a change of control in any of the Target Group Companies or otherwise by reason of the execution or delivery of this Agreement or the consummation of the Transactions.
- (b) As of the date of this Agreement, there are no material disputes between or among the Target Group Companies or, to Seller's Best Knowledge, the Dedicated JV Subsidiaries and any governmental or self-regulatory authority or any labor union, employee association, works council or other employee representative, with respect to compliance with applicable labor or employment Laws, the amount in dispute of which would exceed CHF 50,000.
- (c) (i) Seller has Made Available the collective bargaining agreements or works council agreements applicable to the Business Employees or under which any of the Target Group Companies otherwise have any ongoing obligations as of the date of this Agreement, (ii) there are, and in the past three years prior to the date of this Agreement there have been, no union, employee association, works council or other labor organizing campaigns, petitions or other organizing activities targeting any Business Employees, and (iii) at the date of this Agreement, there are no

unfair labor practice charges, or complaints, are pending before the National Labor Relations Board or other labor board or governmental or self-regulatory authority with respect to any Business Employee. No strikes, slowdowns or work stoppages are pending or, to Seller's Best Knowledge, threatened with respect to employees and no such strike, slowdown or work stoppage has occurred during the past three years prior to the date of this Agreement.

- (d) To Seller's Best Knowledge, as of the date of this Agreement, none of the Key Persons has given or received notice of termination in writing.
- (e) With respect to the Business Employees, the Target Group Companies and, to Seller's Best Knowledge, the Dedicated JV Subsidiaries are in compliance in all material respects with all applicable Laws relating to labor and employment, including without limitation, those relating to: classification as (i) an employee or independent contractor, or (ii) exempt or non-exempt from overtime eligibility, safety and health, employment standards, workers compensation, labor relations, immigration, human rights, discrimination, harassment, privacy and equitable payment of wages.
- (f) Each applicable Target Group Company has timely completed, or will timely complete prior to Closing, any information and consultation procedures with the relevant employee representative bodies of such entity required in connection with the Separation Transactions and the Transactions pursuant to applicable Laws.
- (g) No material claim with respect to payment of wages, salary, overtime pay or discrimination, or material investigation by any labor inspectorate is pending or, to Seller's Best Knowledge, threatened before any court, or governmental or self-regulatory authority at the date of this Agreement, with respect to any Business Employee or employee formerly working for the Business of the Target Group Companies or any of their current or former service providers in relation to the Business, and no such claims have been brought in the past three years prior to the date of this Agreement.
- (h) The list of employees of the Current Group pertaining to the Business (collectively, the **Business Employees**) and in scope of the Separation attached hereto as Annex 4.1.13 is, at the date of this Agreement, accurate in all material respects and sets out each of the following:
  - 5. the total number of Business Employees (excluding, for the avoidance of doubt, any SU Employees), including those who are on maternity or other statutory leave or other long-term leave of absence but excluding any temporary or agency workers or contractors; and
  - 6. the date of commencement of continuous employment, position title and work location, but excluding any temporary or agency workers or contractors and leave status.
- (i) Seller shall update Annex 4.1.13 within five Business Days of the delivery of the Separation Completion Notice and at Closing, which update shall also include the identity of the employer of each Business Employee.

### 13. Pensions and Benefit Plans, Social Security

- (a) Annex 4.1.14(a) sets forth a list of all material Employee Benefit Plans that are, or will following completion of the Separation be, maintained by the Target Group Companies.
- (b) For each of the material Employee Benefit Plans that are, or will following completion of the Separation be, maintained by the Target Group Companies, Seller has Made Available to the extent applicable (i) the current plan documents and any amendments thereto or, in the case of an unwritten Employee Benefit Plan, a written description thereof, (ii) where applicable, the most recent favorable determination or opinion letters from the IRS or other equivalent Governmental Authority, and (iii) where applicable, all trust Contracts, insurance Contracts and other documents relating to the funding or payment of benefits.
- (c) The Employee Benefit Plans and Employee Benefit Arrangements comply in all material respects with applicable Laws and the terms of the governing documents and related Contracts. To Seller's Best Knowledge, in the past three years prior to the date of this Agreement there have been no prohibited transactions or breaches of any of the duties imposed on fiduciaries under applicable Law with respect to the Employee Benefit Plans that could result in any liability or excise Tax under applicable Law being imposed on any Target Group Company or that could materially adversely affect any Employee Benefit Plan.
- (d) None of the Company, US Target or their respective ERISA Affiliates currently has, or at any time in the past has had, an obligation to contribute to a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the US Code, or a "multiemployer plan" as defined in Section 3(37) of ERISA or Section 414(f) of the US Code, in each case would result in any Liability after Closing to Buyer or its Affiliates (including any Target Group Company or US Target). None of the Target Group Companies currently has, or at any time in the past has had, an obligation to contribute to an Employee Benefit Plan for employees in Canada (i) that is a "multi-employer pension plan" or equivalent as defined under applicable Laws or (ii) in which less than all of the participating employers are "affiliates" as such term is defined in the Business Corporations Act (Ontario).
- (e) There is no pending or threatened assessment, complaint, proceeding, or investigation of any kind in any court or government agency with respect to any Employee Benefit Plan or Employee Benefit Arrangement (other than routine claims for benefits).
- (f) All (i) insurance premiums required to be paid with respect to, (ii) benefits, expenses, and other amounts due and payable under, and (iii) contributions, transfers, or payments required to be made to, any Employee Benefit Plan or Employee Benefit Arrangement prior to the Closing Date will have been paid, made or accrued on or before the Closing Date.
- (g) No amount that could be received (whether in cash or property or the vesting of property) as a result of any of the Transactions by any employee, officer, or director of any Target Group Company under any employment, severance or termination Contract, other compensation arrangement or Employee Benefit Plan currently in effect would be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the US Code or other similar Law).

- (h) No individual has (or would, following completion of the Separation, have) a right to any gross up or indemnification from a Target Group Company with respect to any such Employee Benefit Plan, payment or arrangement subject to Section 409A of the US Code.
- (i) A Target Group Company or a Current Subsidiary has filed or caused to be filed, within the times and in the manner prescribed by applicable Law, all social security returns and social security reports which are required to be filed in relation to the Business Employees. Such returns and reports accurately reflect all social security liabilities of each such entity for the periods covered thereby in relation to the Business Employees. All amounts due to be paid or to be deducted and paid by the Target Group Companies in respect of any governmental social security insurance and housing fund with respect to the Business Employees under applicable Laws on or before the date of this Agreement have been or will be paid when due or have been accrued. To Seller's Best Knowledge, there are no circumstances that may give rise to claims against a Target Group Company for the breach of their duties to file the social security returns and reports required to be filed in relation to the Business Employees or to pay the required social security contributions with respect to the Business Employees when due.

#### 14. Material Contracts

- (a) **Material Contracts** are Contracts with respect to the Business that:
  - (i) are Material Customer Agreements or Material Supply Agreements;
    - 1. are Real Property Leases with a turnover exceeding CHF 500,000 *per annum*;
    - 2. prohibit or materially limit the right to compete in any line of the business conducted by the Target Group Companies;
    - 3. provide for an unpaid annual aggregate payment obligation (*Zahlungsverpflichtung*) with respect to the Business exceeding CHF 500,000 *per annum*;
    - 4. involve not yet provided performance of services or delivery of goods by or to the Target Group Companies with respect to the Business of a value exceeding (a) CHF 500,000 *per annum* if services or goods are to be performed or delivered to any Target Group Company, or (b) CHF 1,000,000 *per annum* if services or goods are to be performed or delivered by any Target Group Company;
  - 5. contain any provision which provides for material adverse consequences with respect to the Business by reason of a change of control in Target Group Companies;
  - 6. are joint venture, alliance or other form of similar material cooperation Contracts (including any Contract relating to the Dedicated JV Subsidiaries);
  - 7. relate to an Affiliate Transaction that is not being terminated at Closing;



8. relate to the sale, assignment, transfer (including transfers to Seller or its Affiliates), license or disposal of any tangible or intangible assets or properties material to the Business (other than in connection with the Separation);
  9. are Post-Separation Agreements; or
  10. relate to material licenses of trademarks, trade names, service marks or any other material Intellectual Property rights (other than any shrink wrap or other software that is generally commercially available and not customized) for which annual fees exceed CHF 500,000.
- (b) The Material Contracts are valid and enforceable, and the Current Group has performed all material obligations arising out of such Contracts. To Seller's Best Knowledge, at the date of this Agreement no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) would reasonably be expected to (i) result in a material violation or breach of any provision of any Material Contract, (ii) give any Person the right to declare a default or exercise any remedy under any Material Contract, (iii) give any Person the right to receive or require a penalty under any Material Contract, or (iv) give any Person the right to cancel, terminate or modify any Material Contract, except for such cancellations, terminations or modifications that are made in accordance with the terms of such Material Contract and that do not result from a violation or breach thereof by the Target Group Companies.
- (c) Seller has Made Available a true and correct copy of each Material Contract existing 5 Business Days before the date of this Agreement.
- (d) At the date of this Agreement, Seller or its Affiliates have not received any written notice that any counter-party to a Material Customer Agreement, Material Supply Agreement or Lease is considering or intends to cease to use a Target Group Company's goods or services or to otherwise terminate or materially modify or change its relationship with the a Target Group Company.

## 15. Insurance

- (a) Seller, where applicable through its Affiliates, has, and in the past three years before the date of this Agreement, has had, in place insurance coverage with respect to the Business pursuant to certain insurance policies (the **Insurance Policies**) and/or insurance certificates. All premiums due on the Insurance Policies have been or will be duly paid when due. To Seller's Best Knowledge, all Insurance Policies are valid and in force.
- (b) There is no pending insurance claim nor to Seller's Best Knowledge, no event has occurred or circumstance exists which would give rise to, or serve as a valid basis for, the commencement of any claim under any of the Insurance Policies exceeding an amount of CHF 1,500,000 relating to the Business.

## 16. Litigation

- (a) As of the date of this Agreement, other than as set forth on Annex 4.1.17, there are no actions, arbitrations, suits, proceedings or investigations pending or, to Seller's Best Knowledge,

threatened, against the Business, the Current Group (with respect to the Business) or the Target Group Companies by or before any Governmental Authority which involve a claim or investigation by such body or by a third party with an actual or potential value in excess of CHF 500,000.

- (b) To Seller's Best Knowledge, no event has occurred or circumstance exists which would give rise to, or serve as a valid basis for, the commencement of any action, arbitrations, suit, proceeding, arbitration or investigation by or against the Business, the Current Group (with respect to the Business) or the Target Group Companies with an actual or potential value in excess of CHF 500,000.
- (c) The Business, the Current Group (with respect to the Business) and the Target Group Companies are not, and during the past three years prior to the date of this Agreement have not been, subject to any judgment, order or decree entered in any lawsuit or proceeding. During the past three years prior to the date of this Agreement, the Business, the Current Group (with respect to the Business) and the Target Group Companies have not settled any claim prior to being sued or prosecuted or a judgment being given in respect of it with a value in excess of CHF 500,000.

#### **17. Compliance with Laws**

- (a) (i) The Current Group (with respect to the Business), the Target Group Companies and, to Seller's Best Knowledge, the Dedicated JV Subsidiaries are, and at all times in the last three years prior to the date of this Agreement have been, in compliance, in all material respects, with all Laws to which the Business, the Current Group (with respect to the Business), Target Group Companies or the Dedicated JV Subsidiaries are subject and (ii) in the last three years prior to the date of this Agreement, none of them, in the case of the Dedicated JV Subsidiaries, to Seller's Best Knowledge, has received any written notifications from any Governmental Authority asserting that they are in material violation of with any Law applicable to the Current Group (with respect to the Business) and the Target Group Companies.
- (b) The Target Group Companies hold, and are not in material violation of, or material default under, each Permit material to the Business. All such Permits material to the Business are valid and in full force and effect and no modification, termination, suspension or cancellation of any such Permit material to the Business is pending or, to Seller's Best Knowledge, threatened.

#### **18. Sanctions**

- (a) None of Seller, the Current Group (with respect to the Business) nor the Target Group Companies, nor, to Seller's Best Knowledge, any of their officers, directors, employees, shareholder (acting in their capacities as such), agents or other third party representatives acting on their behalf is currently, or has been during the past three years: (i) a Sanctioned Person; (ii) a party to or otherwise involved in any Contracts, transactions, dealings, or relationships with or for the benefit of any Sanctioned Person or involving any Sanctioned Territory; (iii) engaging in any export, reexport, transfer or provision of any goods, software, technology, data or service without, or exceeding the scope of, any required or applicable licenses or authorizations under all applicable Trade Control Laws; or (iv) otherwise in violation of applicable Economic Sanctions Laws or Trade Control Laws.

- (b) During the last three years prior to the date of this Agreement, none of the Current Group (with respect to the Business) nor the Target Group Companies has received from any Governmental Authority or any other Person any notice, inquiry, or internal or external allegation, made any voluntary or involuntary disclosure to a Governmental Authority or conducted any internal investigation or audit, in each case, concerning any actual or potential violation or wrongdoing related to Trade Control Laws.
- (c) None of the Current Group (with respect to the Business) nor the Target Group Companies has imported merchandise into the US or the EU that has been or is covered by an anti-dumping duty order or countervailing duty order or is subject to or otherwise covered by any pending anti-dumping or countervailing duty investigation by agencies of the US government or the European Commission.
- (d) For the purpose of this Section 19 of Annex 4.1, reference to "Current Group," "Target Group" or "Target Group Company" shall include the Dedicated JV Subsidiaries, *provided however* that in respect of the Dedicated JV Subsidiaries the representation shall only be given to Seller's Best Knowledge.

## **19. Unlawful Payments**

None of the Current Group (with respect to the Business) nor the Target Group Companies has authorized, offered, promised or given any financial or other advantage (including any payment, loan, gift, promise, entertainment, or transfer of anything of value), directly or indirectly, to or for the use or benefit of (a) any official, member, employee or agent of a Governmental Authority, (b) any political party or official thereof, or any candidate for political office, or (c) any other Person, in any such case while knowing or having reason to know that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly, to any customer, member of the Governmental Authority or candidate for political office, in each case in violation of the anti-bribery provisions of the FCPA, the U.K. Bribery Act and similar foreign anti-bribery Laws (the **ABAC Laws**), in order to assist the Business in improperly obtaining or retaining business for or with any Person, in improperly directing business to any Person, or in securing any improper advantage. With respect to the Business, Seller has adopted, implemented, and maintained (i) accurate books and records and (ii) auditing and monitoring processes and systems of internal controls that are reasonably adequate to ensure compliance with all applicable ABAC Laws. The Current Group (with respect to the Business) and the Target Group Companies have complied with the applicable ABAC Laws. For the purpose of this Section 20 of Annex 4.1, reference to "Current Group," "Target Group" or "Target Group Company" shall include, Seller's Best Knowledge, the Dedicated JV Subsidiaries, *provided however* that in respect of the Dedicated JV Subsidiaries the representation shall only be given to Seller's Best Knowledge.

## **20. Broker's Fees**

None of Seller, the Current Group or the Target Group Companies has employed any broker, adviser, finder or intermediary in connection with the Transactions which would obligate the Target Group or the Business to pay a broker's, finder's or similar fee or commission in connection with Closing.

## **21. Inventory**

All Inventory consists of a quality and quantity usable and saleable (if held for sale) in the Ordinary Course, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to net realizable value or for which adequate reserves have been established in accordance with the accounting policies in the Preparation Guide. At Closing, the Target Group Companies will have good and valid title to or right to use (where applicable) all of the Inventory that is material to the operation of the Business, free and clear of all Liens.

## **22. Title to Assets; Condition of Assets Fixed**

- (a) As of the date of this Agreement, the Company and the Current Subsidiaries have good and valid title to all of the assets material to the Business, free and clear of all Liens (other than Permitted Liens), and as of the Closing Date, the Company, the Target Subsidiaries and the Dedicated JV Subsidiaries will have good and valid title to all of the assets material to the Business (other than the German Real Property and the Peruvian Business), free and clear of all Liens (other than Permitted Liens). As of the date of this Agreement, the Company and the Current Subsidiaries have a valid leasehold interest in all of the assets that are leased by any such party, and as of the Closing Date, the Company, the Target Group Companies and the Dedicated JV Subsidiaries will have a valid leasehold interest in all of the assets that are leased by any such party, except where the failure to have a valid leasehold interest has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (b) The tangible fixed assets material to the operation of the Business, taken as a whole, are free from material defects, in good operating condition (ordinary wear and tear excepted) and are adequate for the uses to which they are being put in the Business's operations in all material respects.

## **23. No Undisclosed Liabilities**

None of the Target Group Companies has any Liabilities that would have been required to be reflected in, reserved against or otherwise described in the Deal Financial Statements in accordance with IFRS, consistently applied, and that were not so reflected, reserved against or described therein, except for (a) Liabilities identified as such in the Deal Financial Statements or the Completion Accounts, (b) Liabilities that have been incurred since December 31, 2018 in the Ordinary Course, (c) Liabilities and obligations under this Agreement (including in connection with the Separation), (d) arising under executory provisions of Contracts entered into in the Ordinary Course (but not Liabilities for breach of any such Contract), or (e) Liabilities that would not reasonably be expected to be material to the Business or the Target Group Companies, taken as a whole.

## **24. Related Party Transactions**

All Contracts with related parties binding upon or affecting the Target Group Companies or, to Seller's Best Knowledge, the Dedicated JV Subsidiaries, in each case with respect to the Business, have been entered into on an arm's-length basis (within the meaning of applicable Tax Laws).

## **25. Data Protection and Cybersecurity**

- (a) With respect to the Business, the Target Group Companies have implemented appropriate technical and organizational measures to protect against the unauthorized or unlawful processing of, or

accidental loss or damage to, any personal data processed by the Target Group Companies, and to ensure a level of security appropriate to the risk represented by the processing and the nature of the personal data. In the three years prior to the date of this Agreement, there has been no material security breach involving any personal data, or other information in the Target Group Companies' possession, custody, or control requiring notice to any individual or Governmental Authority with respect to the Business. In the three years prior to the date of this Agreement, with respect to the Business, to Seller's Best Knowledge there have been no written notifications with respect to violation of Laws related to personal data or other information in the control or possession of each of the Target Group Companies.

(b) The operation of the Business by the Target Group Companies has been in all material respects in compliance with Data Protection Laws.

## **26. Sufficiency of Assets**

Except for the services provided in the Ancillary Agreements, including the Post-Separation Agreements, the assets, properties, Contracts (held directly or in trust by Seller or its Affiliates) and rights that are used in the operation of the Business by the Target Group Companies and, to Seller's Best Knowledge, the Dedicated JV Subsidiaries comprise, in aggregate, all of the assets, properties, Contracts, and rights necessary to operate the Business in the Ordinary Course and upon completion of the Transactions, including the Separation, Buyer, shall have, directly or indirectly, ownership of, or rights in, all of the assets, properties, Contracts (other than those held in trust by Seller pursuant to this Agreement) and rights necessary to conduct the Business in all material respects as currently conducted.

## **27. Completion of Separation**

Subject to Sections 6.3, 6.5 and 6.6 of this Agreement, at Closing, the Separation will have been completed in all material respects in accordance with the terms and conditions of this Agreement and the Separation Concept.

## Annex 4.2 | Representations of Buyer

1. Buyer is duly incorporated, organized and validly existing under the Laws of its place of incorporation and has the full corporate power, authority and right to carry on its business as presently being conducted. Buyer is not subject to any bankruptcy or similar proceeding.
2. Buyer has the right and capacity to execute this Agreement and to perform its obligations hereunder. This Agreement constitutes valid and binding obligations of Buyer, enforceable against Buyer in accordance with its terms. There are no limitations under applicable Law, subject to applicable bankruptcy, reorganization, insolvency or other Laws affecting the enforcement of creditors' rights in general, and the constitutional documents of Buyer that would prevent Buyer from entering into or performing its obligations under this Agreement.
3. No authorizations, permits or consents are required from any governmental or administrative authority or any third party (including any shareholders or creditors of Buyer) for the consummation of the Transactions other than as set forth herein.
4. There are no actions, suits or proceedings pending or threatened in writing against Buyer before any court, arbitral tribunal or governmental or administrative authority which involve a claim by such body, or by a third party seeking to hinder the consummation of the Transactions.
5. As of the date of this Agreement, Buyer has provided Seller correct and complete copies of the executed commitment letter and related fee letter (redacted) for debt financing as in effect on the date of this Agreement (the **Debt Financing Commitments**), pursuant to which the lenders party thereto (collectively, the **Buyer Lenders**) have agreed to lend the amounts set forth therein (the **Debt Financing**), and, if funded in accordance with the terms of, and following satisfaction of the conditions in, the Debt Financing Commitments, such amounts, together with cash on hand and other sources, will be sufficient to enable Buyer to pay the Preliminary Consideration. As of the date of this Agreement, such Debt Finance Commitments are in full force.
6. As of the date of this Agreement, there are no side agreements undisclosed to Seller between Buyer and/or any of its Affiliates on one hand and the Debt Financing Sources on the other hand that would reasonably be expected to affect the availability on the Closing Date of, or impose new or additional (or adversely expand, modify or amend any of the existing) conditions precedent to, the Debt Financing or reduce the amount available thereunder; *provided, however*, that, notwithstanding the foregoing, Buyer may modify, supplement or amend the Debt Financing Commitments to add lenders, lead arrangers, bookrunners, syndication agents, other agents or similar entities that have not executed the Debt Financing Commitments as of the date hereof or to increase the amount of funds available thereunder.
7. As of the date of this Agreement, no event has occurred that, with or without notice, lapse of time or both, would reasonably be expected to constitute a default or breach on the part of Buyer or, to the actual knowledge of Buyer, any other parties thereto under any term or condition of the Debt Financing Commitments or a failure of any condition to the Debt Financing or otherwise result in any portion of the Debt Financing being unavailable on the Closing Date. As of the date of this Agreement, Buyer has no reason to believe that the conditions to the Debt Financing shall not be

satisfied or that the full amount of the Debt Financing contemplated by the Debt Financing Commitments shall not be available as of the Closing.

**DESCRIPTION OF THE REGISTRANT’S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

The following description sets forth certain material terms and provisions of our securities that are registered under Section 12 of the Securities Exchange Act of 1934. This description also summarizes relevant provisions of the Ohio Revised Code. The following description is a summary and does not purport to be complete. It is subject to, and qualified in its entirety by reference to, the applicable provisions of the Ohio Revised Code and our Amended and Restated Articles of Incorporation (the “**Articles of Incorporation**”) and our Amended and Restated Regulations (the “**Regulations**”), each of which is incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.2 is a part. We encourage you to read our Articles of Incorporation, our Regulations, and the applicable provisions of the Ohio Revised Code for additional information.

**General**

Our authorized capital stock consists of:

- 400,000,000 common shares, par value \$.01 per share; and
- 40,000,000 preferred shares, par value \$.01 per share.

**Common Shares**

The holders of common shares will be entitled to one vote per share on all matters submitted to a vote of shareholders. Our Regulations provide that, except as otherwise provided in the Articles of Incorporation, a Preferred Share Designation, or by law, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at a meeting of shareholders and entitled to vote on the subject matter will be the act of the shareholders. Each director is to be elected by a plurality vote of the shares present, in person or represented by proxy at a meeting of shareholders and entitled to vote on the election of directors.

Subject to the rights of holders of any outstanding serial preferred shares, the holders of common shares are entitled to receive dividends as may be declared from time to time by our Board of Directors out of funds legally available for those dividends. Holders of common shares will be entitled to receive, upon any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary, all remaining assets available for distribution to shareholders after satisfaction of our liabilities and the preferential rights of any preferred shares that may then be issued and outstanding. The holders of common shares have no conversion rights, nor are there any redemption, sinking fund or preemptive rights with respect to common shares.

**Preferred Shares**

We may issue one or more series of preferred shares as created and authorized by our Board of Directors. The Board of Directors will determine and the prospectus relating to any particular issuance of serial preferred shares will describe the terms of those serial preferred shares, including, to the extent applicable, the following:

- the number of shares to constitute each series and the name and serial designation thereof;
- the annual dividend rate or rates and dividend payment dates;
- whether dividends are to be cumulative or non-cumulative;



- whether any series will be subject to redemption, and, if so, the manner of redemption and the redemption price or prices;
- whether the shares of any series shall be subject to the operation of a purchase, retirement or sinking fund, and, if so, whether such purchase, retirement or sinking fund shall be cumulative or non-cumulative;
- the terms, if any, upon which shares of any series shall be convertible into, or exchangeable for, or shall have rights to purchase or other privileges to acquire shares of any other class or of any other series of the same or any other class, including the price or prices or the rate or rates of conversion, exchange, purchase or acquisition and the terms of adjustment, if any;
- the limitations and restrictions, if any, to be effective while any shares of any series are outstanding upon the payment of dividends or other distributions on, and upon the purchase, redemption or other acquisition of, the common shares or any other series or class of our stock ranking junior to the shares of any series, either as to dividends or upon liquidation;
- the conditions or restrictions, if any, upon creation of indebtedness of the Company or issuance of any additional shares of any class ranking on a parity with or prior to the shares of any series either as to dividends or upon liquidation; and
- the voting rights of any series, if any, which rights may be full, limited or denied.

## **Ohio Takeover Legislation**

Transactions Involving Interested Shareholders. Section 1704.02 of the Ohio Revised Code prohibits any Chapter 1704 transaction (as defined below) for a period of three years from the date on which a shareholder first becomes an interested shareholder unless the directors of the corporation approved the transaction prior to the shareholder becoming an interested shareholder or approved the transaction pursuant to which the shareholder became an interested shareholder.

A “Chapter 1704 transaction” is defined to include a variety of transactions such as mergers, consolidations, combinations or majority share acquisitions between or involving an Ohio corporation and an “interested shareholder” or an affiliate or associate of an interested shareholder. An interested shareholder is defined generally as any person who, directly or indirectly, beneficially owns 10% or more of the outstanding voting stock of the corporation.

After such three-year period, a Chapter 1704 transaction is prohibited unless certain fair price provisions are complied with, the directors of the corporation approved the purchase of shares which made the shareholder an interested shareholder, or the shareholders of the corporation approve the transaction by the affirmative vote of two-thirds of the voting power of the corporation or such other percentage set forth in the articles of incorporation of the corporation provided that a majority of the disinterested shareholders approve the transaction.

Chapter 1704 is applicable to all corporations formed under Ohio law.

Control Share Acquisitions. Section 1701.831 of the Ohio Revised Code provides that certain notice and informational filings and special shareholder meeting and voting procedures must be followed prior to consummation of a proposed “control share acquisition.” The Ohio Revised Code defines a “control share acquisition” as any acquisition of an issuer’s shares which would entitle the acquirer, immediately after that acquisition, directly or indirectly, to exercise or direct the exercise of voting power of the issuer in the election of directors within any one of the following ranges of that voting power:

- one-fifth or more but less than one-third of that voting power;
- one-third or more but less than a majority of that voting power; or
- a majority or more of that voting power.

Assuming compliance with the notice and information filings prescribed by the statute, the proposed control share acquisition may be made only if, at a special meeting of shareholders, the acquisition is approved by at least a majority of the voting power of the issuer represented at the meeting and at least a majority of the voting power remaining after excluding the combined voting power of the “interested shares.” “Interested shares” are the shares held by the intended acquirer and the employee-directors and officers of the issuer, as well as certain shares that were acquired after the date of the first public disclosure of the acquisition but before the record date for the meeting of shareholders and shares that were transferred, together with the voting power thereof, after the record date for the meeting of shareholders.

A corporation can provide in its articles of incorporation or regulations that Section 1701.831 does not apply to control share acquisitions of shares of such corporation. Neither our Articles of Incorporation nor our Regulations contain any provisions to alter the effect of 1701.831 of the Ohio Revised Code.

### **Cumulative Voting**

Under Ohio law, unless otherwise provided in a corporation’s articles of incorporation, each shareholder is entitled to cumulate such shareholder’s votes in the election of directors if the shareholder gives notice to the corporation. Except as may be otherwise provided in any designation of the terms of a series of preferred shares, our Articles of Incorporation prohibit cumulative voting by shareholders.

**SCHEDULE OF EXECUTIVES WITH MANAGEMENT CONTINUITY AGREEMENTS**

<b><u>Title</u></b>	<b><u>Name</u></b>	<b><u>Years / Comp*</u></b>	<b><u>Excise Tax Gross Up?</u></b>
Chairman, President and Chief Executive Officer	Robert M. Patterson	3	Y
Executive Vice President, Chief Financial Officer	Bradley C. Richardson	2	N
Senior Vice President, Chief Commercial Officer	Michael A. Garratt	2	N
Senior Vice President, President of Distribution	Scott J. Horn	2	N
Senior Vice President, General Counsel and Secretary	Lisa K. Kunkle	3	Y
Senior Vice President, Global Operations and Process Improvement	M. John Midea, Jr.	2	N
Senior Vice President, President of Color, Additives and Inks	Woon Keat Moh	2	N
Senior Vice President, President of Specialty Engineered Materials	Christopher L. Pederson	2	N
Senior Vice President, Mergers & Acquisitions	Joel R. Rathbun	2	N
Senior Vice President, Chief Human Resources Officer	João José San Martin Neto	2	N

\* Years of compensation payable upon change of control

**Exhibit 21.1**

**SUBSIDIARIES OF THE COMPANY**

<b><u>Name</u></b>	<b><u>Formation Jurisdiction</u></b>
Altona Properties Pty Ltd. (37.4% owned)	Australia
Auseon Limited	Australia
Braspenco Indústria de Compostos de Plásticos Ltda.	Brazil
Burton Rubber Company	Delaware
Butler Brothers, Inc. (49% owned)	Minnesota
Chromatics, Inc.	Connecticut
Colorant Chromatics AB	Finland
Colorant Chromatics AG	Switzerland
Colorant Chromatics Europe B.V.	Netherlands
Colorant Chromatics Trading Shanghai, Ltd.	China
Colorant GmbH	Germany
ColorMatrix Argentina S.A.	Argentina
ColorMatrix Asia Limited	Hong Kong
ColorMatrix-Brazil, LLC	Ohio
ColorMatrix Corporation, The	Ohio
ColorMatrix do Brasil Indústria e Comércio de Pigmentos e Aditivos Ltda.	Brazil
ColorMatrix Europe BV	Netherlands
ColorMatrix Europe Limited	United Kingdom
ColorMatrix Group, Inc.	Delaware
ColorMatrix Holdings, Inc.	Delaware
ColorMatrix Plastic Colorant (Suzhou) Co. Ltd.	China
ColorMatrix Russia LLC	Russia
ColorMatrix South Africa (Pty) Ltd.	South Africa
ColorMatrix UK Holdings Limited	United Kingdom
ColorMatrix UK Limited	United Kingdom
COMPTEK Kunststoffverarbeitung GmbH	Germany
Conexus, LLC	Nevada
Franklin-Burlington Plastics, Inc.	Delaware
Geon Company Australia Limited, The	Australia
Geon Development, Inc.	Ohio
Glasforms, Inc.	California
GLS Hong Kong Limited	Hong Kong
GLS International, Inc.	Illinois
GLS Thermoplastic Alloys (Suzhou) Co., Ltd.	China
GLS Trading (Suzhou) Co., Ltd.	China
GSDI Specialty Dispersions, Inc.	Ohio
Hanna France S.à.r.l.	France
Hanna-Itasca Company	Delaware
Hanna Proprietary Limited	Delaware
Hansand Steamship Company (33% owned)	Delaware
IQAP Czech, s.r.o.	Czech Republic
IQAP Masterbatch Group, S.L.	Spain
Juffali-PolyOne Master Batches Company (51% owned)	Saudi Arabia
Kimberly Iron (14% owned)	Michigan
Laconian Holding Company (f/k/a Spartech Mexico Holding Company)	Missouri
L.E. Carpenter & Company	Delaware

<b><u>Name</u></b>	<b><u>Formation Jurisdiction</u></b>
MAG International (50% owned)	Delaware
Magenta Master Fibers S.r.l.	Italy
Magenta Master Fibers Co., Ltd.	China
M.A. Hanna Asia Holding Company	Delaware
M.A. Hanna Export Services Corp.	Barbados
M.A. Hanna Plastics Group, Inc.	Michigan
NEU Specialty Engineered Materials, LLC	Ohio
Orangeville-Brampton Rail Access Group, Inc. (16.6% owned)	Canada
O'Sullivan Plastics, LLC	Nevada
Paramount Coal Company (50% owned)	Virginia
Pilot Knob Pellet Co. (50% owned)	Missouri
PlastiComp Europe GmbH	Germany
PlastiComp, Inc.	Minnesota
POL Laconian de Mexico Holding Company, S de R.L. de C.V. (f/k/a Spartech de Mexico Holding Company, S de R.L. de C.V.)	Mexico
POL Luxembourg Holding Company, S.a r.l (f/k/a Spartech Luxembourg Holding Co. S.à r.l)	Luxembourg
POL Mexico HoldingsPOL, LLC (f/k/a Spartech Mexico Holdings, LLC)	Missouri
Polymer Diagnostics, Inc.	Ohio
PolyOne Belgium S.A.	Belgium
PolyOne Canada Inc.	Canada
PolyOne Color and Additives Germany, GmbH	Germany
PolyOne Corporation UK Limited	United Kingdom
PolyOne Corporation (Shanghai) Limited (a/k/a PolyOne Shangahi, China)	China
PolyOne Costa Rica S.A.	Costa Rica
PolyOne CR s.r.o.	Czech Republic
PolyOne de Mexico Distribution, S. de R.L. de C.V.	Mexico
PolyOne de Mexico Manufacturing, S. de R.L. de C.V.	Mexico
PolyOne de Mexico S.A. de C.V.	Mexico
PolyOne Deutschland, GmbH	Germany
PolyOne Distribution Canada Inc. (f/k/a POL Canada Inc.)	New Brunswick
PolyOne Distribution Trading (Shanghai) Co. Ltd.	China
PolyOne (Dongguan) Vinyl Compounds Company Ltd.	China
PolyOne Engineered Films, LLC	Virginia
PolyOne España, S.L.	Spain
PolyOne Europe Finance S.à.r.l.	Luxembourg
PolyOne Europe Logistics S.A.	Belgium
PolyOne Europe S.à.r.l.	Luxembourg
PolyOne France S.A.S.	France
PolyOne Funding Corporation	Delaware
PolyOne Global S.à.r.l.	Luxembourg
PolyOne Hong Kong Holding Limited	Hong Kong
PolyOne Hungary, Ltd.	Hungary
PolyOne Intellectual Property Ltd.	Cyprus
PolyOne International Finance Unlimited Company	Ireland
PolyOne International Ltd.	British Virgin Islands
PolyOne International Real Estate Corporation	Ohio

<b><u>Name</u></b>	<b><u>Formation Jurisdiction</u></b>
PolyOne International Trading (Shanghai) Co., Ltd.	China
PolyOne Italy S.r.l.	Italy
PolyOne Japan K.K.	Japan
PolyOne Korea, Ltd.	Korea
PolyOne Limited	Cyprus
PolyOne LLC	Delaware
PolyOne Luxembourg S.à.r.l.	Luxembourg
PolyOne Management (Shanghai) Co. Ltd.	China
PolyOne Manufacturing S.à.r.l.	Luxembourg
PolyOne Poland Manufacturing, Sp.z.o.o.	Poland
PolyOne Polimeks Plastik Tic. ve San. A.S.	Turkey
PolyOne Polymers India Pvt. Ltd.	India
PolyOne Puerto Rico, LLC	Puerto Rico
PolyOne S.à r.l.	Luxembourg
PolyOne Shenzhen Co. Ltd.	China
PolyOne Singapore Pte Ltd	Singapore
PolyOne Suzhou, China	China
PolyOne Sweden, A.B.	Sweden
PolyOne Tekno Polimer Mühendislik Plastikleri San. ve Tic. A.S.	Turkey
PolyOne Tekno Ticaret Mühendislik Plastikleri San. ve Tic. A.S.	Turkey
PolyOne Termoplásticos do Brasil Ltda.	Brazil
PolyOne Th. Bergmann GmbH	Germany
PolyOne (Thailand) Co., Ltd.	Thailand
PolyOne UK Finance Limited	United Kingdom
PolyOne Vinyl Compounds Asia Holdings Limited	British Virgin Islands
RA Products, Inc.	Michigan
Regalite Plastics, LLC	Massachusetts
Rutland DCC Inc Manufacturing Private Limited (50% owned)	India
Rutland Europe Limited	United Kingdom
Rutland Group, Inc.	Delaware
Rutland Holding Company	Delaware
Rutland Intermediate Holding Company	Delaware
Rutland International Limited	United Kingdom
Rutland Plastics, Inc.	Florida
Seola ApS	Denmark
Shanghai Colorant Chromatics Co., Ltd.	China
Shawnee Holdings, LLC	Virginia
SilCoTec, Inc.	Indiana
Sociedad Quimica Alemana S.A.	Peru
Spartech, S.A.S.	France
Uniplen Indústria de Polimeros Ltda.	Brazil

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-231236) pertaining to the PolyOne Supplemental Retirement Benefit Plan (As Amended and Restated Effective January 1, 2014);
- (2) Registration Statement (Form S-8 No. 333-217879) pertaining to the PolyOne Corporation 2017 Equity and Incentive Compensation Plan;
- (3) Registration Statement (Form S-8 No. 333-205919) pertaining to the Amended and Restated PolyOne Corporation 2010 Equity and Performance Incentive Plan;
- (4) Registration Statement (Form S-8 No. 333-181787) pertaining to the PolyOne Corporation 2010 Equity and Performance Incentive Plan;
- (5) Registration Statement (Form S-8 No. 333-166775) pertaining to the PolyOne Corporation 2010 Equity and Performance Incentive Plan;
- (6) Registration Statement (Form S-8 No. 333-157486) pertaining to the PolyOne Retirement Savings Plan;
- (7) Registration Statement (Form S-8 No. 333-47796) pertaining to Post Effective Amendment No. 3 on Form S-8 to Form S-4 pertaining to the Geon Company 1993 Incentive Stock Plan, the Geon Company 1995 Incentive Stock Plan, the Geon Company 1998 Interim Stock Award Plan, the Geon Company 1999 Incentive Stock Plan, the PolyOne Corporation Deferred Compensation Plan for Non-Employee Directors and the M.A. Hanna Company Long-Term Incentive Plan;
- (8) Registration Statement (Form S-8 No. 333-141029) pertaining to the PolyOne Retirement Savings Plan and the DH Compounding Company Savings and Retirement Plan and Trust; and
- (9) Registration Statement (Form S-3 No. 333-236116) of PolyOne Corporation.

of our reports dated February 18, 2020, with respect to the consolidated financial statements of PolyOne Corporation and the effectiveness of internal control over financial reporting of PolyOne Corporation, included in this Annual Report (Form 10-K) of PolyOne Corporation for the year ended December 31, 2019.

/s/ Ernst & Young LLP

Cleveland, Ohio  
February 18, 2020

**CERTIFICATION**

I, Robert M. Patterson, certify that:

1. I have reviewed this Annual Report on Form 10-K of PolyOne Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Robert M. Patterson

Robert M. Patterson  
Chairman, President and Chief Executive Officer

February 18, 2020

**POLYONE CORPORATION**



## CERTIFICATION

I, Bradley C. Richardson, certify that:

1. I have reviewed this Annual Report on Form 10-K of PolyOne Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Bradley C. Richardson

Bradley C. Richardson  
Executive Vice President and Chief Financial Officer

February 18, 2020

POLYONE CORPORATION

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of PolyOne Corporation (the "Company") for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert M. Patterson, Chairman, President and Chief Executive Officer of the Company, do hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods expressed in the Report.

/s/ Robert M. Patterson

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Robert M. Patterson  
Chairman, President and Chief Executive Officer

February 18, 2020

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

**POLYONE CORPORATION**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of PolyOne Corporation (the "Company") for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bradley C. Richardson, Executive Vice President and Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods expressed in the Report.

/s/ Bradley C. Richardson

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Bradley C. Richardson  
Executive Vice President and Chief Financial Officer

February 18, 2020

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

**POLYONE CORPORATION**