

ASX ANNOUNCEMENT

27 February 2024

Update in relation to takeover bid for Metallica Minerals Limited

Diatreme Resources Limited (ASX: DRX) (**DRX** or **Diatreme**) refers to its announcement dated 23 February 2024 in relation to its conditional intention to make a takeover bid for all of the ordinary shares in Metallica Minerals Limited (ASX: MLM) (**MLM** or **Metallica**).

Diatreme and Metallica entered a confidentiality deed on 30 October 2023 (**Confidentiality Deed**). The Confidentiality Deed contains a standstill undertaking which restricts Diatreme's ability to acquire ordinary shares in Metallica (**Metallica Shares**) under the proposed takeover bid, without Metallica's consent.

To address this, Diatreme will include as a defeating condition to the proposed takeover bid, a condition that Diatreme obtains either the written consent or waiver from Metallica to the acquisition of Metallica Shares under the proposed takeover bid or the Takeovers Panel makes orders and declarations that Diatreme is no longer restrained from acquiring Metallica Shares under the Offer by the terms of the Confidentiality Deed.

The full updated conditions to the proposed takeover bid are detailed in the Appendix to this announcement (including removal of the preliminary condition regarding receipt of an ASIC modification to section 629 of the Corporations Act 2001 (Cth), which has been satisfied as announced to ASX on 26 February 2024).

This market announcement was authorised for release by:

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Chief Executive Officer

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Non-executive Director

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APPENDIX

1 Preliminary condition

Diatreme's intention to make the Offer is also conditional on, if ASX confirms that any Offer Consideration to be issued to Ilwella Pty Ltd (**Ilwella**) and Sibelco Asia Pacific Pty Ltd (**Sibelco**) under the Offer must be Restricted Securities as a result of the application of Listing Rule 10.7, Diatreme first obtaining an ASIC modification of section 625(3) of the Corporations Act in respect of those Restricted Securities or Diatreme receiving confirmation from ASIC that such modification is not required.

2 Consideration

Subject to the detailed terms of the Offer to be set out in Diatreme's bidder's statement, Metallica shareholders will receive 1.3319 Diatreme Shares for each Metallica Share held (**Offer Consideration**), subject to the rounding of fractional entitlements and treatment of foreign Metallica shareholders (which will be specified in Diatreme's bidder's statement).

3 Metallica convertible securities

Pursuant to section 617(2) Corporations Act, the Offer will extend to Metallica Shares issued during the Offer period on the exercise or conversion of any Metallica Options.

4 Offer conditions

- (a) **(Minimum acceptance)** Before the end of the Offer Period, Diatreme has a Relevant Interest in at least 50.1% of Metallica Shares (by number).
- (b) **(Diatreme Shareholder Approval Condition)** Before the end of the Offer Period, Diatreme having received:
 - (i) the approval of Diatreme Shareholders for the purpose of Listing Rule 10.1 for the acquisition of the Metallica Shares held by Ilwella and Sibelco (and issue of the Offer Consideration for each Metallica Share held by Ilwella and Sibelco, to Ilwella and Sibelco as consideration under the Offer) (**Listing Rule 10.1 Approval**);
 - (ii) a waiver from ASX to permit the acquisition by Diatreme of the Metallica Shares held by Ilwella Pty Ltd and Sibelco Asia Pacific Pty Ltd (and issue of the Offer Consideration for each Metallica Share held by Ilwella and Sibelco, to Ilwella and Sibelco as consideration under the Offer) without first obtaining the Listing Rule 10.1 Approval; or
 - (iii) a notice or confirmation from ASX that Diatreme is not required to obtain the Listing Rule 10.1 Approval,and the Listing Rule 10.1 Approval, or the waiver, notice or confirmation from ASX (as applicable) remains in full force and effect, has not expired under the Listing Rules at the end of the Offer Period, and Diatreme has not received notice to the contrary.
- (c) **(Release of standstill undertaking)** Before the end of the Offer Period:
 - (i) Diatreme receives:
 - (A) written consent from Metallica under the standstill provision of the Confidentiality Deed to the acquisition of Metallica Shares under the Offer; or
 - (B) a written confirmation, release or waiver, as the case may be, from Metallica that the provisions of the Confidentiality Deed will not be breached by reason of Diatreme acquiring any Metallica Shares under the Offer; or

- (ii) the Takeovers Panel makes orders and declarations that Diatreme is no longer restrained under the Confidentiality Deed from acquiring Metallica Shares under the Offer.
- (d) **(Metallica Options)** Before the end of the Offer Period:
 - (i) each Metallica Option has expired;
 - (ii) each Metallica Option has been exercised by the holder or has otherwise converted into a Metallica Share; or
 - (iii) each holder of a Metallica Option has agreed in writing with Diatreme to:
 - (A) forfeit the Metallica Option;
 - (B) transfer the Metallica Option to Diatreme; or
 - (C) exchange the Metallica Option for similar securities in Diatreme in consideration for the cancellation or forfeiture of the Metallica Option.
- (e) **(FIRB condition)** Before the end of the Offer Period:
 - (i) Diatreme is not required to obtain from the Treasurer (or the Treasurer's delegate) under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) a written notice stating that, or to the effect that, the Australian Commonwealth Government does not object to Diatreme acquiring all the Metallica Shares under the Offer (**FIRB Approval**);
 - (ii) if Diatreme is required to obtain FIRB Approval, the Treasurer (or the Treasurer's delegate) has provided the FIRB Approval without condition (other than the conditions set out in the list of 'standard' tax conditions set out in Section D of FIRB Guidance 12 – Tax Conditions dated 9 July 2021); or
 - (iii) by reason of the elapse of time, the Treasurer (and each of the Treasurer's delegates) ceases to be empowered to make any order or decision under Division 2 of Part 3 of the FATA in respect of the acquisition of all the Metallica Shares under by Diatreme under the Offer.
- (f) **(No regulatory action)** Between the Announcement Date and the end of the Offer Period (each inclusive):
 - (i) no preliminary or final decision, order or direction is made or issued by any Regulatory Authority (other than any FIRB Approval);
 - (ii) no action, proceeding or investigation is announced, commenced or threatened by any Regulatory Authority; and
 - (iii) no application is made to any Regulatory Authority (other than by Diatreme or any associate of Diatreme),

in consequence of or in connection with the Offer which restrains, prohibits, impedes or otherwise adversely affects the making of the Offer, the acquisition of the Metallica Shares by Diatreme, the rights of Diatreme in respect of the Metallica and the Metallica Shares or materially restrains, prohibits, impedes or otherwise adversely affects the continued operation of the businesses of any Metallica Group Member (other than any action or decision by or application to ASIC or the Takeovers Panel in exercise of the powers or discretions conferred by the Corporations Act).
- (g) **(No prescribed occurrences)** Between the Announcement Date and the date that is three Business Days after the end of the Offer Period (each inclusive), none of the following prescribed occurrences happen:
 - (i) Metallica converts all or any of its shares into a larger or smaller number of shares;

- (ii) any Metallica Group Member resolves to reduce its share capital in any way;
 - (iii) any Metallica Group Member:
 - (A) enters into a buy-back agreement; or
 - (B) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or s257D(1) Corporations Act;
 - (iv) any Metallica Group Member:
 - (A) issues shares;
 - (B) grants an option over shares; or
 - (C) agrees to make such an issue or grant such an option,

in each case to a person other than a Metallica Group Member, other than in respect of the issue of any Metallica Shares following the exercise or conversion of any Metallica Options that Metallica has publicly disclosed the existence of before the Announcement Date;
 - (v) any Metallica Group Member:
 - (A) issues securities or other instruments convertible into shares or debt securities; or
 - (B) agrees to issue securities or other instruments convertible into shares or debt securities,

in each case to a person other than a Metallica Group Member;
 - (vi) any Metallica Group Member disposes of, or agrees to dispose of, the whole or a substantial part of its business or property;
 - (vii) any Metallica Group Member charges, or agrees to charge, the whole or a substantial part of its business or property;
 - (viii) any Metallica Group Member resolves that it be wound up;
 - (ix) the making of an order by a court for the winding up of any Metallica Group Member;
 - (x) any Metallica Group Member executing a deed of company arrangement;
 - (xi) the appointment of a liquidator or provisional liquidator of any Metallica Group Member;
 - (xii) an administrator of any Metallica Group Member being appointed under sections 436A, 436B or 436C Corporations Act; and
 - (xiii) the appointment of a receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official in relation to the whole, or a substantial part, of the property of any Metallica Group Member.
- (h) **(No regulated event)** Between the Announcement Date and the end of the Offer Period (each inclusive), none of the following events happen:
- (i) any Metallica Group Member makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
 - (ii) any Metallica Group Member:

- (A) materially increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees;
 - (B) accelerates the rights of any of its directors or employees to compensation or benefits of any kind; or
 - (C) pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract which, at the Announcement Date of this document, is in place and the details of which have been publicly disclosed by a Metallica Group Member), other than in the ordinary course of business, as a result of contracted arrangements that are consistent with past practice and in effect before the Announcement Date;
- (iii) any Metallica Group Member:
- (A) enters into any contract or commitment involving revenue or expenditure by the Metallica Group of more than \$500,000 over the term of the contract or commitment;
 - (B) terminates or amends in a material manner any contract material to the conduct of the Metallica Group's business or which involves revenue or expenditure of more than \$500,000 over the term of the contract;
 - (C) waives any material third party default where the financial impact on the Metallica Group will be in excess of \$500,000; or
 - (D) accepts a settlement or compromise of a material matter (relating to an amount in excess of \$500,000) for less than the full compensation due to the Metallica Group;
- (iv) any Metallica Group Member does any of the following in respect of any CFS Tenement which any Metallica Group Member holds or has any right title or interest in:
- (A) relinquishes, sells or disposes of any interest or creates any Encumbrance over any of the CFS Tenements;
 - (B) takes any action or omits to take any action that results in or may reasonably be expected to result in a breach of the terms any of the CFS Tenements or any environmental authority relating to any of the CFS Tenements; or
 - (C) takes any action or omits to take any action that results in or may reasonably be expected to result in the surrender of any of the CFS Tenements or any environmental authority relating to any of the CFS Tenements;
- (v) any Metallica Group Member varies or waives its rights in any materially adverse respect, or terminates, cancels, surrenders, forfeits or allows to lapse or expire (without renewal on terms and conditions that are no less favourable to the Metallica Group) any material licence, lease or Authorisation (including a CFS Tenement) (or a number of licences, leases or Authorisations (including CFS Tenements) which, when taken together, are material to the conduct of the business of the Metallica Group as a whole);
- (vi) any Metallica Group Member enters into a transaction or arrangement which, if completed, would result in a Third Party being entitled to, acquire any legal, beneficial or economic interest in production from the Metallica Group Member's current or future operations or right to sell or market production (other than an agreement with Diatreme);

- (vii) any Metallica Group Member commencing business activities not already carried out as at the Announcement Date, whether by way of acquisition or otherwise other than in the ordinary course of business;
 - (viii) any Metallica Group Member enters into or agrees to enter into any agreement, contract, lease, joint venture, partnership, farm-in agreement, management agreement, royalty agreement, marketing agreement, off-take agreement or other arrangement or instrument (including a commitment to contribute to exploration, appraisal, development or other costs and expenditure if a call or other demand is made upon it), which:
 - (A) materially affects the ability of any Metallica Group Member to freely market its share of the resource from the CFS Tenements;
 - (B) imposes obligations or liabilities on any Metallica Group Member of at least \$500,000; or
 - (C) restricts the ability of any Metallica Group Member or any person who controls Metallica from engaging in or competing with any business in any place;
 - (ix) any Metallica Group Member increasing the aggregate level of its borrowings by any amount or entering into any swap, option, futures contract, forward commitment or other derivative transaction;
 - (x) any Metallica Group Member gives or agrees to give any Encumbrance over any of its assets (or an interest in any of its assets), other than liens in the ordinary and usual course of business;
 - (xi) any Metallica Group Member postpones the payment of trade creditors or accelerates the collection of trade debtors, in each case having regard to the policies applied for such payment and collection in the 12 months prior to the Announcement Date other than in the ordinary course of business;
 - (xii) any Metallica Group Member undertakes or agrees to undertake capital expenditure in excess of \$100,000 in aggregate;
 - (xiii) any Metallica Group Member provides financial accommodation (irrespective of what form of financial indebtedness that accommodation takes) in excess of \$100,000;
 - (xiv) any Metallica Group Member takes or omits to take action which results in a breach of law material to the Metallica Group Member;
 - (xv) any Metallica Group Member, adopts a new constitution or modifies or repeals its constitution or a provision of it;
 - (xvi) any Metallica Group Member enters into or resolves to enter into a transaction with any related party of Metallica as defined in section 228 Corporations Act; or
 - (xvii) any Metallica Group Member does anything that results in a taxable gain for the Metallica Group by either causing a subsidiary to cease being a subsidiary of Metallica or causing Metallica, or a subsidiary of Metallica to cease being a consolidated group,
- other than an event:
- (xviii) as reasonably required by applicable law or by any Regulatory Authority; or
 - (xix) as disclosed in an announcement by Metallica to ASX, or publicly available document lodged with ASIC, in the 12 months prior to the Announcement Date.
- (i) **(No material adverse change)** Between the Announcement Date and the end of the Offer Period (each inclusive), there is no occurrence of an event, change, condition, matter or thing, or disclosure or

announcement of information by any Metallica Group Member, or that becomes known to Diatreme, concerning any such event, change, condition matter or thing (each a **Specified Event**) which, whether individually or when aggregated with all such Specified Events:

- (i) diminishes or could reasonably be expected to diminish:
 - (A) Metallica's JORC Code compliant Mineral Resources estimate in respect of the Cape Flattery Silica Project by 10% or more from the position publicly disclosed by Metallica prior to the Announcement Date; or
 - (B) the consolidated net assets of the Metallica Group by 10% or more (by reference to the consolidated net assets contained in Metallica's audited financial statements for the financial year ended 30 June 2023);
- (ii) have a material effect on the CFS Tenements, including the status or terms of (or rights attaching to) the CFS Tenements, or the ability of the owner of the CFS Tenements to exploit them;
- (iii) has or could reasonably be expected to have a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Metallica Group taken as a whole;

other than any Specified Event that arises from or in connection with:

- (iv) the Offer;
- (v) facts and circumstances disclosed in an announcement by Metallica to the ASX, or a publicly available document lodged with ASIC, in the 12 months prior to the Announcement Date;
- (vi) a change on or after the Announcement Date in:
 - (A) Australian or international economic conditions, credit markets, or capital markets (including changes in interest rates);
 - (B) the industry in which Metallica operates;
 - (C) laws (including any statute, ordinance, rule, regulation, the common law and equitable principles) or the interpretation, application or non-application of any laws by any Regulatory Authority; or
 - (D) Accounting Standards;
- (vii) any war, act of terrorism, civil unrest or similar event occurring on or after the Announcement Date;
- (viii) any act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions occurring on or after the Announcement Date;
- (ix) the portion of any event, matter change or circumstances which is as a consequence of losses, expenses, damages or other costs covered by insurance which the Metallica Group's insurers have agreed to pay; or
- (x) costs and expenses associated with the Offer,

provided that, in the case of exceptions paragraphs 4(i)(v), 4(i)(vii) and 4(i)(viii), such Specified Event does not affect Metallica in a manner that is materially disproportionate to the effect on other companies of a similar size operating in the same industry as Metallica and, for the avoidance of doubt, in the event Metallica is affected materially disproportionately by such Specified Event, the financial impact of such Specified Event will be taken into account for the purposes of this definition only to the extent that the financial impact on Metallica is in

excess of the proportionate financial impact of the Specified Event on other companies of a similar size operating in the same industry as Metallica.

(j) **(No materially inaccurate public information)** Between the Announcement Date and the end of the Offer Period (each inclusive), neither of the following occurs:

- (i) Diatreme becomes aware; or
- (ii) Metallica publicly discloses (whether in an announcement to ASX or in its Target's Statement (or a Supplementary Target's Statement)),

that:

- (iii) any document filed or lodged by or on behalf of any Metallica Group Member with ASX or ASIC:
 - (A) contains a statement which is incorrect or misleading in any material respect; or
 - (B) from which there is a material omission; or
- (iv) without limiting paragraph (iv) above:
 - (A) Metallica's JORC Code compliant Mineral Resources estimates in respect of the Cape Flattery Silica Project; or
 - (B) any financial result or metric stated in an annual report or half-year report in respect of the Metallica Group,

that was filed or lodged by or on behalf of a Metallica Group Member with ASX or ASIC was materially misstated.

(k) **(No exercise of rights under certain agreements or arrangements)** If between the Announcement Date and the end of the Offer Period (each inclusive) any person:

- (i) is entitled to exercise, or will as a result of the Offer, the acquisition of Metallica Shares by Diatreme, or removal of Metallica from the official list of ASX if the Offer is successful become entitled to exercise; or
- (ii) purports to exercise, states an intention to exercise (whether or not that intention is stated to be a final decision), or asserts the ability to exercise,

any right under any provision of any agreement or other arrangement to which any Metallica Group Member is a party or to which any Metallica Group Member or any of its assets or businesses may be subject, which results in, or could result in:

- (iii) any moneys borrowed by a Metallica Group Member being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date provided for in such agreement or arrangement;
- (iv) any such agreement or arrangement that imposes or may impose obligations or liabilities on any party of more than \$500,000 in total or that is otherwise material to the business of the Metallica Group being terminated or modified or not renewed or the performance of any obligations under any such agreement or arrangement being accelerated; or
- (v) any assets of any member of the Metallica Group, including any interest of any Metallica Group Member in any body corporate, trust, joint venture or other entity, being sold, transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions, or any contractual arrangement relating to any such asset or interest, being terminated or modified,

that person gives the relevant Metallica Group Member and Diatreme in writing a binding, irrevocable and unconditional release or waiver of that right.

- (l) **(No material acquisitions, disposals or commitments)** Between the Announcement Date and the end of the Offer Period (each inclusive), none of the following events occurs, are announced or become known to Diatreme:
- (i) any Metallica Group Member acquires, offers to acquire or agrees to acquire one or more companies, businesses or assets (or any interest therein) for an amount in aggregate greater than \$500,000, other than in the ordinary course of business;
 - (ii) any Metallica Group Member disposes of, offers to dispose of or agrees to dispose of one or more companies, businesses or assets (or any interest therein) for an amount, or in respect of which the book value is, in aggregate, greater than \$500,000, other than in the ordinary course of business; and
 - (iii) any Metallica Group Member enters into, or offers to enter into or agrees to enter into, any agreement, joint venture, partnership, management agreement or commitment which would require expenditure, or the foregoing of revenue, by any Metallica Group Member of an amount which is, in aggregate, more than \$500,000, other than in the ordinary course of business.
- (m) **(No Competing Proposal)** Between the Announcement Date and the end of the Offer Period (each inclusive), no Competing Proposal is made or announced by a Third Party or is otherwise received by Metallica.
- (n) **(Minimum bid price)** No requirement arises under section 621(3) Corporations Act (as modified by ASIC Corporations (Minimum Bid Price) Instrument 2015/1068) to increase the Offer Consideration as a result of a fall in the value of a Diatreme Share after the Announcement Date.

5 Definitions

In this Appendix the following words have these meanings unless the contrary intention or the context otherwise requires:

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

Announcement Date means 16 February 2024.

Associate has the meaning given in section 12 Corporations Act.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or the securities exchange operated by it (as the case requires).

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, notarisisation, licence, quota, permit or waiver, however described, and any condition attaching to it;
- (b) in the context of anything that could be prohibited or restricted by law if a Regulatory Authority acts in any way within a specified period, the expiry of that period without that action being taken, including any renewal or amendment.

A\$ or \$ means Australian dollar.

Business Day has the meaning given in Chapter 19 of the Listing Rules.

Cape Flattery Silica Project or **CFS** means the project wholly owned by Cape Flattery Silica Pty Ltd (a wholly owned subsidiary of Metallica) within EPM 25734.

CFS Tenement means EPM 25734 and ML 100284.

Competing Proposal means a transaction which, if completed, would cause a person other than Diatreme to:

- (a) acquire a relevant interest in more than 50% of Metallica's securities;
- (b) acquire control of Metallica, within the meaning of section 50AA Corporations Act; or
- (c) acquire all or a substantial part of Metallica Group's business, assets or undertaking (including any CFS Tenement or interest in a CFS Tenement).

Confidentiality Deed means the confidentiality deed dated 30 October 2023 between Diatreme and Metallica.

Control has the meaning given in section 50AA of the Corporations Act.

Diatreme means Diatreme Resources Limited ACN 061 267 061.

Encumbrance means any one or more of the following:

- (a) any interest, right or power that in substance secures payment or performance of any obligation, for example a mortgage, charge or security interest under the *Personal Property Securities Act 2009* (Cth);
- (b) any preferential or adverse interest of any kind;
- (c) a right to buy or use assets, for example a hire purchase agreement, option, licence, lease or agreement to purchase;
- (d) a right to set-off or right to withhold payment of a deposit or other money;
- (e) an easement, restrictive covenant, caveat or similar restriction over property;
- (f) an agreement to create any of the items referred to in paragraphs (a) to (e) above or to allow any of those items to exist; or
- (g) a notice under section 255 *Income Tax Assessment Act 1936* (Cth), subdivision 260-A in schedule 1 *Taxation Administration Act 1953* (Cth) or any similar legislation.

JORC Code means the Australian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 Edition).

Listing Rule 10.1 Approval has the meaning given in paragraph 4(b)(i) of this Appendix.

Listing Rules means the Listing Rules of ASX and any other rules of ASX which are applicable while Diatreme is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

Metallica means Metallica Minerals Limited ACN 076 696 092.

Metallica Group means Metallica and its subsidiaries, and each being a **Metallica Group Member**.

Metallica Option means:

- (a) the listed options over Metallica Shares under the ASX code MLMAS;

- (b) the unlisted options over Metallica Shares under the ASX code MLMOB; and
- (c) any other securities convertible into or that confer a right to be issued Metallica Shares.

Metallica Share means a fully paid ordinary share in Metallica.

Mineral Resources has the meaning given in the JORC Code.

Offer means Diatreme's offer to acquire Metallica Shares.

Offer Consideration means the consideration under the Offer of 1.3319 new Diatreme Shares for each Metallica Share.

Offer Period means the period during which the Offer will remain open for acceptance.

Regulatory Authority means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and ASX or any other stock exchange.

Related Entities means in respect of an entity, a second entity that:

- (a) Controls the first entity;
- (b) is under the Control of the first entity; or
- (c) is under the Control of a third entity that also Controls the first entity.

Restricted Securities has the meaning given in Chapter 19 of the Listing Rules.

Third Party means a party other than Diatreme, Metallica and any of their Related Entities.