

# ASX ANNOUNCEMENT



14 July 2011

## Macarthur Coal, Peabody and ArcelorMittal agree basis for Due Diligence

### Background

On 11 July 2011, Macarthur Coal Limited ("Macarthur") announced that it had received a non-binding indicative and conditional proposal from Peabody Energy Corporation ("Peabody") and ArcelorMittal S.A. ("ArcelorMittal") (together "BidCo") under which, subject to due diligence and other matters, BidCo would propose a takeover bid for all of the issued ordinary shares in Macarthur at a price of A\$15.50 per share, less the amount of the final dividend which Macarthur pays in relation to FY2011.

### Update

Macarthur today confirms that it has reached agreement with BidCo on the timing and scope of a due diligence process to be undertaken to facilitate the proposed offer. As part of this agreement, BidCo has agreed that in the event that BidCo makes an offer at any time in the next 12 months:

1. the offer price will be no less than \$A15.50 per share unless the Macarthur Board expressly consents otherwise or there is a competing offer;
2. up to 16 cents per share of any final dividend for FY2011 declared by the Macarthur Board will not be deducted from the offer price; and
3. offer conditions would be no more onerous than the offer conditions outlined in **Attachment A**.

### Advice to Shareholders

Shareholders are advised that the indicative proposal is not a binding offer, is not capable of acceptance and the Board makes no recommendation in relation to the proposal. The Macarthur Board is currently preparing an evaluation of the Company's assets and resources and is exploring options to maximise value.

Macarthur continues to advise shareholders to **take no action** in relation to the proposal until they receive further communications from the Board. The Board will provide shareholders with further advice within the time necessary for shareholders to make their own decisions about the future of their Macarthur shareholding.

Macarthur is being advised by J.P. Morgan Australia Limited and Corrs Chambers Westgarth.

## **About Macarthur Coal**

Macarthur Coal (ASX: MCC) is a Queensland success story. Listed in 2001, it is now the world's largest producer of seaborne low volatile pulverised coal injection (LV PCI) coal. The Company's focus is on high margin or low cost coal assets with a strong market demand and product diversification capability.

The Company's goal is to double 2009 production to achieve sales of 9.2mtpa by 2014. To achieve this, Macarthur Coal will focus on two strategic objectives – operational excellence and sustainable growth.

## **For further information, please contact:**

### **Investor inquiries**

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## Annexure – bid conditions

### 1 Bid Conditions

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#### 1.1 FIRB

Before the end of the Offer Period, one of the following occurs:

- (a) Bidco receiving notice from, or on behalf of, the Australian Treasurer to the effect that there is no objection under the Commonwealth Government's foreign investment policy or under the *Foreign Acquisition and Takeovers Act 1975* (Cth) (the **FATA**) to the acquisition by Bidco of the Shares under the Offer and that notice is not subject to any condition;
- (b) the period provided under the FATA during which the Australian Treasurer may make an order under section 18 or an interim order under section 22 of the FATA prohibiting the acquisition by Bidco of the Shares under the Offer elapsing, without such an order being made; or
- (c) if an interim order prohibiting the acquisition of the Shares by Bidco under the Offer is made by the Australian Treasurer under section 22 of the FATA, the subsequent period for making a final order prohibiting the acquisition elapsing, without such a final order being made.

#### 1.2 Other regulatory approvals

Before the end of the Offer Period, all waiting periods applicable under any Relevant Law shall have expired or terminated and all approvals or consents that are required by law, regulation or by any Public Authority, whether in Australia or elsewhere, as are necessary to permit:

- (a) the Offer to be lawfully made to and accepted by the Shareholders;
- (b) the Takeover Bid to be completed;
- (c) the continued operation of Macarthur's businesses and required as a result of the Offer; or
- (d) any member of the Macarthur Group to carry on its business,

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same.

### **1.3 No regulatory action**

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (a) there is not in effect any preliminary or final decision, order or decree issued by any Public Authority;
- (b) no action or investigation is announced, commenced or threatened by any Public Authority; and
- (c) no application is made to any Public Authority (other than by Bidco or any Associate of Bidco),

in consequence of or in connection with the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or materially impact upon, the making of the Offers and the completion of Takeover Bid or which requires the divestiture by Bidco of any Shares or any material assets of Macarthur or any Subsidiary of Macarthur.

### **1.4 Minimum acceptance**

At the end of the Offer Period, Bidco has a Relevant Interest in at least 50.01% of the Shares (on a fully diluted basis).

### **1.5 Monto litigation and MDL 162 litigation**

- (a) Between the Announcement Date and the end of the Offer Period (each inclusive), there is not in effect any preliminary or final decision, order, direction or decree issued by any Court, or any compromise or settlement, in consequence of or in connection with the Monto Claims, in each case which has had or would be reasonably likely to have a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Macarthur Group taken as a whole.
- (b) Between the Announcement Date and the end of the Offer Period (each inclusive), there is not in effect any preliminary or final decision, order, direction or decree issued by any Court, or any compromise or settlement, in consequence of or in connection with the MDL 162 Litigation, in each case which has had or would be reasonably likely to have a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Macarthur Group taken as a whole.

### **1.6 No material adverse change**

- (a) Between the Announcement Date and the end of the Offer Period (each inclusive), none of the following occurs:
  - (1) an event, change, condition, matter or thing occurs or will or is reasonably likely to occur;
  - (2) information is disclosed or announced by Macarthur concerning any event, change, condition, matter or thing; or

- (3) information concerning any event, change, condition, matter or thing becomes known to Bidco (whether or not becoming public),  
(each of (1), (2) and (3), a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters or things of a like kind, has had or would be considered reasonably likely to have:
- (4) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Macarthur Group taken as a whole; or
- (5) without limiting the generality of clause 1.6(a)(4):
  - (A) the effect of a diminution in the value of the consolidated net assets of the Macarthur Group, taken as a whole, by at least \$250 million against what it would reasonably have been expected to have been but for such Specified Event;
  - (B) the effect of a diminution in the consolidated net profit after tax of the Macarthur Group, taken as a whole, by at least \$25 million in any financial year for the Macarthur Group against what they would reasonably have been expected to have been but for such Specified Event; or
  - (C) the effect of preventing the Macarthur Group from operating any one or more of the existing mines of the Macarthur Group for a period of three months or longer or from completing any of its material development activities.
- (b) For the purposes of clause 1.6(a), Bidco shall not be taken to know of information concerning any event, change, condition, matter or thing before the Announcement Date, unless Bidco knows or ought reasonably to have known (having regard to the information actually known by Bidco and, the information disclosed by Macarthur in its public filings with the ASX, in each case before the Announcement Date), of the extent or magnitude of the event, change, condition, matter or thing.

## 1.7 No prescribed occurrences

Between the Announcement Date and the date 3 Business Days after the end of the Offer Period (each inclusive), none of the following prescribed occurrences happen:

- (a) Macarthur converts all or any of its Shares into a larger or smaller number of Shares;
- (b) Macarthur or a Subsidiary of Macarthur (which is not a directly or indirectly wholly owned Subsidiary) resolves to reduce its share capital in any way;
- (c) Macarthur or a Subsidiary of Macarthur (which is not a directly or indirectly wholly owned Subsidiary):
  - (1) enters into a buy-back agreement; or
  - (2) resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;

- (d) Macarthur or a Subsidiary of Macarthur issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, in each case other than Shares issued or agreed to be issued in the ordinary course of business under employee or director share plans;
- (e) Macarthur or a Subsidiary of Macarthur issues, or agrees to issue, convertible notes;
- (f) Macarthur or a Subsidiary of Macarthur disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) Macarthur or a Subsidiary of Macarthur charges, or agrees to charge, the whole, or a substantial part, of its business or property;
- (h) Macarthur or a Subsidiary of Macarthur resolves to be wound up;
- (i) the appointment of a liquidator or provisional liquidator of Macarthur or a Subsidiary of Macarthur;
- (j) a court makes an order for the winding up of Macarthur or a Subsidiary of Macarthur;
- (k) an administrator of Macarthur, or a Subsidiary of Macarthur, is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) Macarthur or a Subsidiary of Macarthur executes a deed of company arrangement; or
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Macarthur or a Subsidiary of Macarthur.

## **1.8 No persons entitled to exercise or exercising rights under certain agreements or instruments**

Between the Announcement Date and the end of the Offer Period (each inclusive), there is no person entitled to exercise, exercising or purporting to exercise, stating an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), or asserting a right to exercise, any rights under any provision of any agreement or other instrument to which Macarthur or any of its Subsidiaries is a party, or by or to which Macarthur or any of its Subsidiaries or any of its assets or businesses may be bound or be subject, which results, or could result, to an extent to which is material in the context of Macarthur and its Subsidiaries taken as a whole, in:

- (a) any moneys borrowed by Macarthur or any of its Subsidiaries being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (b) any such agreement or other such instrument being terminated or modified or any action being taken or arising thereunder (including the acceleration of the performance of any obligations thereunder);
- (c) the interest of Macarthur or any of its Subsidiaries in any firm, incorporated or unincorporated joint venture, trust corporation or other entity (or any

arrangements relating to such interest) being terminated, modified or being required to be disposed of;

- (d) the assets of Macarthur or any of its Subsidiaries being sold transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions; or
- (e) the business of Macarthur or any of its Subsidiaries with any other person being adversely affected.

## **1.9 No material acquisitions, disposals, changes in the conduct of business or dividends**

Between the Announcement Date and the end of the Offer Period (each inclusive), neither Macarthur nor any of its Subsidiaries:

- (a) acquires or disposes of, or enters into agrees to enter into or announces any agreement for the acquisition or disposal of, any asset or business, or enters into any transaction, which would or would reasonably be likely to involve a material change in:
  - (1) the manner in which Macarthur and its Subsidiaries conduct their business;
  - (2) the nature (including balance sheet classification), extent or value of the assets of Macarthur and its Subsidiaries; or
  - (3) the nature (including balance sheet classification), extent or value of the liabilities of Macarthur and its Subsidiaries,
- (b) without limiting clause 1.9(a), enters into or agrees to enter into or announces any agreement or transaction which would or (subject to one or more conditions) may involve Macarthur or any of its Subsidiaries:
  - (1) acquiring, or agreeing to acquire, one or more companies, trusts, businesses or real property (or any interest in any of the foregoing) or any interest in any incorporated or unincorporated joint venture, in any such case having a value of at least \$35 million;
  - (2) disposing, or agreeing to dispose of, one or more Subsidiaries, companies, trusts, businesses or real property (or any interest in any of the foregoing) or any interest in any incorporated or unincorporated joint venture, in any such case having a value of at least \$35 million;
  - (3) without limiting clause 1.9(b)(1), entering into any contract, commitment or arrangement (including the acquisition of, or offering or agreeing to acquire, any asset or the entering into, or offering or agreeing to enter into, any joint venture, partnership, farm-in or management agreement) that:
    - (A) requires payments by Macarthur and/or any of its Subsidiaries of an amount in excess of \$35 million on an individual basis or which, when aggregated with all other payments that are permitted by this clause 1.9(b)(3), would exceed \$35 million;

- (B) cannot be terminated on less than 12 months' notice without penalty; or
  - (C) is not in the ordinary course of business;
- (4) without limiting clause 1.9(b)(2), disposing, or agreeing to dispose of any asset which has a value in excess of \$35 million on an individual basis or which, when aggregated with all other disposals permitted by this clause 1.9(b)(4), would exceed \$35 million;
- (5) disposing, or agreeing to dispose, of any legal, beneficial or economic interest or right in or in connection with any mining tenement;
- (6) granting, varying or renewing any off-take or marketing rights or arrangements to or with any person;
- (7) providing financial accommodation, other than to members of the Macarthur Group, or receiving financial accommodation in excess of \$35 million, other than from members of the Macarthur Group;
- (8) entering into any agreement or arrangement with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges made in the ordinary and usual course of business and in accordance with existing policy in place as at the Announcement Date; or
- (9) incurring or agreeing to incur an amount of capital expenditure in excess of \$35 million, other than capital expenditure that has been announced by Macarthur to ASX before the Announcement Date;
- (c) gives or agrees to give any Encumbrance over any of its assets, other than liens in the ordinary and usual course of business;
- (d) makes any change to its constitutional documents or passes any ordinary, special or extraordinary resolutions;
- (e) amends the terms of issue of any of the Shares or other securities (including performance rights and options);
- (f) enters into a contract or commitment restraining it from competing with any person or conducting activities in any market or voluntarily changes any accounting policy applied by them to report their financial position;
- (g) accepts as a compromise of a matter less than the full compensation due to it where the compromise is more than \$5 million or waives any material third party default where the financial impact upon Macarthur and its Subsidiaries taken as a whole will be in excess of \$5 million;
- (h) enters into, amends, or agrees to enter into or amend, any contract, commitment or other arrangement with a related party of Macarthur;
- (i) enters into or materially amending any employment, consulting, severance or similar agreement or arrangement with officers, directors, other executives or employees of Macarthur or a Subsidiary or otherwise materially increasing compensation or benefits for any of the above other than in the ordinary course



of business or pursuant to contractual arrangements in effect on the Announcement Date;

- (j) enters into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the Announcement Date or amends in any material respect any arrangement with its financial adviser, or entering into arrangements with a new financial adviser, in respect of the Takeover Bid;
- (k) does anything that would result in a taxable gain in excess of \$10 million for the Macarthur Consolidated Tax Group by either causing any Subsidiary of Macarthur to cease being a member of the Macarthur Consolidated Group or causing the Macarthur Consolidated Tax Group to cease being a Consolidated Group or changes its business or enters into a new business or transaction of a kind that it has not previously entered into in such a manner that tax losses (whether of a revenue or capital nature) in excess of \$10 million in Macarthur or any Subsidiary of Macarthur (including the Macarthur Consolidated Tax Group) stop being available to Macarthur or any Subsidiary of Macarthur (including the Macarthur Consolidated Tax Group). For the purposes of this clause 1.9(b)(k), “Macarthur Consolidated Tax Group” means the Consolidated Group of which Macarthur is the head company (as defined for the purposes of the Tax Act) and “Macarthur Consolidated Group” means Macarthur and each of its Subsidiaries; or
- (l) announces an intention to pay, pays or declares any dividend or other distribution, other than:
  - (1) in respect of any Permitted FY11 Dividend or Permitted Other Dividend (noting that the consideration proposed to be paid under the Offer will be reduced by the amount of any such Permitted Other Dividend);
  - (2) a dividend or distribution to be made by Macarthur with the prior written consent of Bidco; or
  - (3) a dividend or distribution to be made by a Subsidiary of Macarthur where the only recipient of that dividend or distribution is Macarthur or a wholly-owned Subsidiary of Macarthur.

For the avoidance of doubt, nothing in this clause 1.9 prevents the Macarthur Group from:

- acquiring or agreeing to acquire land to be specifically identified for aggregate consideration not exceeding \$150 million; or
- entering into agreements or complying with agreements for port and rail infrastructure in the ordinary course of business, including entering into take or pay arrangements in WICET and Abbot Point, in each case provided Macarthur notifies Bidco in writing reasonably in advance before doing so.

## **1.10 Renewal of tenements**

Between the Announcement Date and the end of the Offer Period (each inclusive), no mining or exploration tenement, permit or licence of Macarthur or any Subsidiary of Macarthur is revoked, is terminated or expires (excluding, for the avoidance of doubt, relinquishment of parts of tenements in the ordinary course of business) without there being a reasonable likelihood of such tenement, permit or licence being renewed or

extended on terms which are no less favourable to Macarthur or the relevant Subsidiary of Macarthur.

## 1.11 No litigation

Between the Announcement Date and the end of the Offer Period (each inclusive), no litigation against Macarthur and/or its Subsidiaries which may reasonably result in a judgement of \$50 million or more is commenced, is threatened in writing to be commenced, is announced, or is made known to Bidco (whether or not becoming public) or Macarthur, other than that which has been fully and fairly publicly disclosed to the ASX by Macarthur prior to the Announcement Date.

## 2 Definitions and interpretation

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### 2.1 Definitions

The meanings of the terms used in this Annexure are set out below, unless the context otherwise appears or requires.

Term	Meaning
<b>A\$ or \$</b>	the lawful currency of the Commonwealth of Australia.
<b>Announcement Date</b>	the date of the first announcement of the Offer by Bidco.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited ABN 98 008 624 691.
<b>Associate</b>	has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this Annexure.
<b>Bidco</b>	the company making the Offer.
<b>Business Day</b>	a day on which banks are open for business in Brisbane, other than a Saturday, Sunday or public holiday in Brisbane and ASX is open for trading.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).

Term	Meaning
<b>Edge Developments</b>	Edge Developments Pty Ltd ABN 26 010 309 529.
<b>Encumbrance</b>	<p>an interest or power:</p> <ol style="list-style-type: none"> <li>reserved in or over an interest in any asset, including any retention of title; or</li> <li>created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,</li> </ol> <p>by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, any agreement to grant or create any of the above.</p>
<b>FATA</b>	<i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth).
<b>H &amp; J Enterprises</b>	H & J Enterprises (Qld) Pty Ltd ABN 91 077 333 736.
<b>Macarthur or MCC</b>	Macarthur Coal Limited ACN 096 001 955.
<b>Macarthur Board</b>	the board of directors of Macarthur.
<b>Macarthur Group</b>	Macarthur and each of its Subsidiaries.
<b>Macarthur Shareholder</b>	a holder of Shares.
<b>MDL 162 Litigation</b>	any claim, demand, suit or proceedings involving or affecting any member of the Macarthur Group directly or indirectly relating to the subject matter of the following Supreme Court of Queensland proceedings: file 2704/11 <i>Re MCG Coal Holdings</i> , file 4019/11 <i>Macarthur Coal Ltd &amp; Ors v MCG Resources Pty Ltd (in liquidation) &amp; Ors</i> , and file 4388/11 <i>Macarthur Coal Limited &amp; Anor v MCG Coal Holdings Pty Ltd &amp; Ors</i> .
<b>Monto Claims</b>	any claim, demand, suit or proceedings involving or affecting any member of the Macarthur Group directly or indirectly relating to the subject matter of the claims against MCC, Monto Coal and Monto Coal 2 brought by Sanrus, Edge Developments and H & J Enterprises, including the following Supreme Court of Queensland proceedings: file 12704/10 <i>Sanrus Pty Limited v Macarthur Coal Limited</i> and file 8609/07 <i>Sanrus Pty Ltd &amp; Ors v Monto Coal 2 Pty Ltd and Anor</i> .

<b>Term</b>	<b>Meaning</b>
<b>Monto Coal</b>	Monto Coal Pty Limited (ACN 098 393 072).
<b>Monto Coal 2</b>	Monto Coal 2 Pty Limited (ACN 098 919 414).
<b>Offer</b>	each offer to acquire Shares made pursuant to the Takeover Bid.
<b>Offer Period</b>	the period during which the Offer is open for acceptance.
<b>Permitted FY11 Dividend</b>	a dividend to be paid to Macarthur Shareholders in respect of the financial year period ended 30 June 2011 of up to \$0.16 per Share.
<b>Permitted Other Dividend</b>	any dividend, other than the Permitted FY11 Dividend, announced or declared in the ordinary course of business which is consistent with Macarthur's current dividend policy of declaring dividends of up to 50% of the amount of net profit after tax in respect of the relevant reporting period. For the avoidance of doubt, to the extent any dividend announced or declared in respect of the financial year period ended 30 June 2011 exceeds \$0.16 per Share, the amount of the excess will be a Permitted Other Dividend.
<b>Public Authority</b>	any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Australia, or elsewhere, including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and ASX or any other stock exchange.
<b>Related Body Corporate</b>	has the meaning given in section 50 of the Corporations Act.
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>Relevant Law</b>	the statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws of any jurisdiction that are designed or intended to prohibit, restrict or regulate actions that may have the purpose or effect of creating a monopoly, lessening competition or restraining trade.
<b>Sanrus</b>	Sanrus Pty Ltd (ABN 43 097 049 315).

<b>Term</b>	<b>Meaning</b>
<b>Share</b>	a fully paid ordinary share in the capital of Macarthur.
<b>Shareholder</b>	a holder of Shares.
<b>Subsidiary</b>	has the meaning given in section 9 of the Corporations Act.
<b>Takeover Bid</b>	an off-market takeover bid made by Bidco for the Shares.
<b>Tax Act</b>	the <i>Income Tax Assessment Act</i> 1997 (Cth).

## 2.2 Interpretation

In this Annexure headings and words in bold are inserted for convenience and do not affect the interpretation of this Annexure and unless the contrary intention appears:

- (a) a reference to this Annexure or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (h) if an act prescribed under this Annexure to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (i) if an event must occur on a stipulated day that is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (j) a reference to time is a reference to Brisbane time;

- (k) a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of them;
- (l) a reference to a part, clause, party, attachment, exhibit or schedule is a reference to a part and clause of, and a party, attachment, exhibit and schedule to, this Annexure and a reference to this Annexure includes any attachment, exhibit and schedule;
- (m) a reference to \$ is to Australian currency unless denominated otherwise; and
- (n) a term defined in the Corporations Act shall have the same meaning in this Annexure.

## **2.3 Inclusive expressions**

Specifying anything in this Annexure after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.