

## Disclosure of movement of 1% or more in substantial holding or change in nature of relevant interest, or both

*Sections 277 and 278, Financial Markets Conduct Act 2013*

**To** NZX Limited  
and  
**To** Metro Performance Glass Limited

Relevant event being disclosed: Movement of 1% or more in substantial holding and change in nature of relevant interest

Date of relevant event: 17 July 2023

Date this disclosure made: 18 July 2023

Date last disclosure made: 16 December 2022

### **Substantial product holder giving disclosure**

Full name: Takutai Limited ('**Takutai**')

### **Summary of substantial holding**

Class of quoted voting products: Ordinary shares in Metro Performance Glass Limited ('**MPG**')

Summary for Takutai

For **this** disclosure,—

(a) total number held in class: 46,566,659

(b) total in class: 185,378,086

(c) total percentage held in class: 25.120%

For **last** disclosure,—

(a) total number held in class: 20,289,230

(b) total in class: 185,378,086

(c) total percentage held in class: 10.945%

### **Details of transactions and events giving rise to relevant event**

Details of the transactions or other events requiring disclosure: On 17 July 2023, Takutai entered into a co-operation and process agreement ('**Co-operation Agreement**') with Masfen Securities Limited. Under the Co-operation Agreement, the parties have agreed to work together in connection with the potential acquisition by them (and/or one or more special purpose vehicles established by the parties) of all or a substantial part of the ordinary shares in MPG or MPG's assets and business by way of a scheme of arrangement under Part 15 of the Companies Act 1993 or other transaction structure.

A copy of the Co-operation Agreement is attached to this disclosure (12 pages).

A change in the nature of Takutai's relevant interest has arisen as:

- Takutai has the power to indirectly control the acquisition or disposal of additional quoted voting products of MPG that are subject of the Co-operation Agreement; and
- there is a qualification on Takutai's power to indirectly control the disposal of the quoted voting products of MPG held by Takutai pursuant to the terms of the Co-operation Agreement.

**Details after relevant event**

Details for Takutai

Nature of relevant interest 1: Registered holder of ordinary shares in MPG

For that relevant interest,—

- (a) number held in class: 20,289,230
- (b) percentage held in class: 10.945%
- (c) current registered holder: No change since last disclosure
- (d) registered holder once transfers are registered: Not applicable

There is a qualification on Takutai's power to indirectly control the disposal of the quoted voting products of MPG held by Takutai pursuant to the terms of the Co-operation Agreement.

Nature of relevant interest 2: Power to indirectly control how the following quoted voting products will be disposed of or otherwise dealt with under the Co-operation Agreement

For that relevant interest,—

- (a) number held in class: 26,277,429
- (b) percentage held in class: 14.175%
- (c) current registered holder: Masfen Securities Limited
- (d) registered holder once transfers are registered: Not applicable

**Additional information**

Address of substantial product holder: 1 Musick Point Road, Bucklands Beach, Auckland 2012

Contact details: Peter Wells | 021 476 938 | peter@takutai.com

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Masfen Securities Limited

**Certification**

I, Peter Kevin Wells, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

## **Co-operation and Process Agreement**

**Takutai Limited**

**Masfen Securities Limited**

## Agreement dated 17 July 2023

### Parties

- 1 **Takutai Limited**, incorporated and registered in New Zealand with company number 6106108 whose registered office is at Ainger Tomlin Limited, 136 Ilam Road, Level 1, Ilam, Christchurch ('**Takutai**')
- 2 **Masfen Securities Limited**, incorporated and registered in New Zealand with company number 1989774 whose registered office is at Level 35, Vero Centre, 48 Shortland Street, Auckland ('**MSL**').

### Background

- A Takutai owns 20,289,230 MPG Shares and MSL has a relevant interest in 26,277,429 MPG Shares.
- B The parties agree to work together to pursue and implement the Proposal.
- C This Agreement governs the relationship between the parties for the purposes of considering, negotiating and implementing the Proposal.

### Agreement

#### 1 Interpretation

##### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

'**Business Day**' means a day (other than a Saturday, Sunday or public holiday) that banks are open for general banking business in Auckland, New Zealand;

'**Companies Act**' means the Companies Act 1993;

'**Competing Proposal**' means an offer, proposal, expression of interest, transaction or arrangement which is proposed by a Third Party pursuant to which a Third Party will, if the offer, proposal, expression of interest, proposed transaction or arrangement is implemented:

- a have a Relevant Interest in 10% or more of the MPG Shares;
- b acquire Control of MPG or the MPG Group; or
- c directly or indirectly acquire, merge with, or acquire (or have the right to so merge with
- d or acquire) a significant economic interest in MPG or all or a significant part of the business of the MPG Group, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition or allotment, capital reduction, share buy-back, sale or purchase of a significant or material part of the assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the MPG Group or other synthetic merger or any other transaction or arrangement,

or would otherwise cause the Proposal to not proceed;

**'Confidential information'** has the meaning given to such term in clause 8;

**'Control'** means, in relation to a person (the **'relevant person'**) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- a has the power to appoint or remove the majority of the members of the governing body of the relevant person;
- b controls, or has the power to control, the affairs or policies of the relevant person; or
- c is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person,

and **'Controlled'** has a corresponding meaning;

**'Derivative'** means any agreement or arrangement which has an economic effect which is equivalent or substantially similar to the acquisition, holding or disposition of financial products (including, physically-settled derivatives, cash-settled derivatives, swaps and contracts for difference);

**'FMCA'** means the Financial Markets Conduct Act 2013;

**'MPG'** means Metro Performance Glass Limited;

**'MPG Group'** means MPG and each of its subsidiaries;

**'MPG Shares'** means fully paid ordinary shares in the capital of MPG;

**'Proposal'** means the potential acquisition by Takutai and MSL (and / or one or more special purpose vehicles established by the parties) of all or a substantial part of the MPG Shares or MPG's assets and business by way of a scheme of arrangement under Part 15 of the Companies Act or other transaction structure (including a takeover offer under the Takeovers Code);

**'Related Company'** has the meaning given to it in section 2(3) of the Companies Act provided that, for the purposes of this Agreement a reference to "company" in that section refers to any body corporate notwithstanding its jurisdiction of incorporation;

**'Related Party'** means, in relation to a company or body corporate:

- a a Related Company of that company or body corporate;
- b any person which Controls that company or body corporate, is Controlled by that company or body corporate, or is Controlled by the same person which Controls that company or body corporate;

**'Relevant Interest'** has the meaning given to the term in the FMCA;

**'Representatives'** means, in relation to a party:

- a the directors, officers, members and employees of that party and its Related Parties; and

- b the agents and advisers of that party (or its Related Parties), but only to the extent acting in that capacity and on the instruction of that party (or its Related Parties) in accordance with its engagement terms, in connection with the Proposal (other than common consortium advisers or agents engaged by the parties in connection with the Proposal),

provided that, where Representatives is used in clauses 4.1 and 5.1, it shall only have the meaning in paragraph b above and not paragraph a;

**'Scheme Implementation Agreement'** means the agreement or deed (as the case may be) between MPG, Takutai and MSL (and / or one or more special purpose vehicles established by the parties) pursuant to which MPG will be acquired via a scheme of arrangement under Part 15 of the Companies Act;

**'Takeovers Code'** means the takeovers code recorded in the Takeovers Code Approval Order 2000 as consolidated, amended, re-enacted or replaced from time to time and as varied by any applicable exemption granted by the Takeovers Panel;

**'Takeovers Panel'** means the Takeovers Panel established by the Takeovers Act 1993;

**'Third Party'** means a person other than a party or any of its Related Parties; and

**'Transaction Documents'** means the Scheme Implementation Agreement, the shareholder agreement among the parties in relation to MPG (and / or one or more special purpose vehicles established by them for the purposes of the Proposal) and financing agreements in relation to the Proposal.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- a headings are inserted for convenience only and are to be ignored in construing this Agreement;
- b a reference to a statute includes all regulations under and amendments to that statute and any enactment passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- c the singular includes the plural and vice versa, and a gender includes each other gender;
- d if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- e **'voting rights'** has the meaning given to it in the Takeovers Code;
- f the expression **'person'** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- g **'subsidiary'** means a subsidiary as defined in sections 5 to 8 of the Companies Act;
- h **'holding company'** means a holding company as defined in section 5 of the Companies Act;

- i wherever the words includes or including are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- j references to a party include that party’s successors and permitted assigns;
- k a reference to any document or instrument includes any variation or replacement of it; and
- l nothing is to be construed adversely to a party just because that party put forward this Agreement or the relevant part of this Agreement.

### 1.3 **General construction**

In interpreting this Agreement, the following rules must be applied unless the context otherwise requires:

- a Headings to clauses are for reference only and are not an aid to interpretation.
- b References to clauses or schedules are to clauses of or schedules to this Agreement, and any schedules referred to form part of this Agreement.
- c References to a party are to a party to this Agreement and include that party’s successors in title and permitted substitutes and assigns (and, where applicable, the party’s legal personal representatives).
- d Words importing the plural include the singular and vice versa and words importing gender import all genders.
- e Any obligation not to do something will be deemed to include an obligation not to suffer, permit, or cause that thing to be done.

## 2 **Proposed transaction**

### 2.1 **Proposed transaction**

- a The parties agree to work together on the terms set out in this Agreement to consider, negotiate, and implement the Proposal.
- b This Agreement governs the relationship between parties for the purposes of considering and progressing the Proposal.

## 3 **Conduct of the Proposal**

### 3.1 **Conduct of the Proposal**

- a Except to the extent otherwise agreed:
  - i each party will regularly and promptly update and consult with the others in respect of the status of discussions with MPG;
  - ii each party will keep the other party promptly informed of information received from MPG that is material to its consideration or negotiations in relation to the Proposal; and

- iii the parties will make all material decisions in relation to the Proposal jointly.
- b No party may legally bind any other party. Any decisions in relation to the content of any binding agreement (including the Scheme Implementation Agreement) in relation to the Proposal is to be agreed jointly among the parties.

### 3.2 Day to day communications

- a The parties will each nominate representatives and advisers to be responsible for day-to-day operational and organisational decisions in respect of the Proposal.
- b The parties will engage in regular and comprehensive communication in relation to the day-to-day conduct, status, and prospects of the Proposal.

## 4 Exclusivity

### 4.1 Exclusivity

During the term of this Agreement, each party undertakes to the other party that:

- a it will not, and must ensure that its Related Parties and Representatives (alone or acting in concert with any Third Party) do not, directly or indirectly, except with the prior written consent of the other party:
  - i enter into any agreement, arrangement or understanding (including participating in any consortium, joint bidding structure and other structure) in relation to an actual, proposed or potential Competing Proposal;
  - ii be involved in a Competing Proposal (including agree to roll an existing interest in MPG Shares into a Competing Proposal);
  - iii accept in respect of, sell or agree to sell any of, its MPG Shares to a Third Party proposing or making a Competing Proposal;
  - iv make any public statement that it will accept or propose to accept a Competing Proposal; or
  - v take any step, or do any act, matter or thing, directly or indirectly which is intentionally designed to frustrate the Proposal (provided that, to avoid doubt, the giving of any notice under clause 7.1a shall be deemed not to be an act intentionally designed to frustrate the Proposal).

## 5 Standstill and other dealings

### 5.1 Standstill

- a Subject to clause 5.1b, during the term of this Agreement:
  - i each party undertakes to the other party that it will not, and must ensure that its Related Parties and Representatives (alone or acting in concert with any Third Party) do not:
    - A directly or indirectly sell, assign, transfer or otherwise dispose of a Relevant Interest in any MPG Shares;

- B increase its Relevant Interest in any MPG Shares;
  - C enter into any Derivative in respect of MPG Shares; or
  - D aid, abet, counsel, assist, facilitate or induce any other person in doing, or publicly announce that it will do, any of the things mentioned in this clause 5.1ai.
- b For the avoidance of doubt, nothing in clause 5.1a prevents:
- i either party (or any of their Related Parties or Representatives) from taking any steps to implement the Proposal;
  - ii either party (or any of their Related Parties or Representatives) acquiring or disposing of a Relevant Interest in MPG Shares as a result of:
    - A acceptances of the Proposal or implementation of the Proposal;
    - B the terms of this Agreement; or
    - C any action taken with the prior written consent of each other party.

## **6 Transaction costs and expenses**

The parties agree that all out-of-pocket costs and expenses in respect of the Proposal (including advisers' costs) incurred (or any joint venture or special purpose vehicles established by the parties in relation to the Proposal) will, to the extent a separate agreement is entered into between the parties following this Agreement and prior to execution of any Scheme Implementation Agreement, be shared by the parties in accordance with the terms of that separate agreement.

## **7 Withdrawal and termination**

### **7.1 Termination and withdrawal**

- a This Agreement terminates upon either party giving written notice to the other party, at any time prior to the execution of any Scheme Implementation Agreement and a shareholders' agreement between the relevant parties, stating that the party giving the notice wishes to withdraw from the Proposal and terminate this Agreement.
- b On and from termination of this Agreement, other than as set out in clause 7.2:
  - i this Agreement will become void and of no further effect; and
  - ii the parties will cease to have any rights or obligations under this Agreement.

### **7.2 Rights and obligations surviving termination and withdrawal**

Any claim that a party has against another party at the time of termination in respect of a breach of obligations under this Agreement prior to the time of termination, survives the termination of this Agreement under clause 7.1.

## **8 Confidentiality**

### **8.1 Confidentiality**

- a In this Agreement, '**Confidential Information**' means this Agreement, the Transaction Documents, the status of negotiations (and any other agreements) with MPG and between the parties and any confidential information provided by one party to another or to any person but excludes any information that:
  - i at the time it was provided to the party, was lawfully in the possession of the party and without breach of any duty or obligation; or
  - ii has been provided to the party but subsequently, through no act or omission of the party (or any person to whom it discloses that information) becomes available from another source and is not subject to any duty or obligation as to confidence.
- b Each party must keep confidential and must not disclose, and must procure that its Related Parties and its Representatives keep confidential and do not disclose the Confidential Information except:
  - i with the prior written consent of the other party;
  - ii where the information is in or has come into the public domain other than due to a breach of any obligation of confidentiality owed by that party;
  - iii to the extent required by any applicable law, order or rule of any court or government agency or the rules of a recognised stock exchange provided that before a party makes any disclosure under this clause 8biii, it must, to the extent practicable having regard to the required timing of the disclosure, consult in good faith with the other party as to the need for and form of that disclosure; or
  - iv to a Representative of that party and of its Related Parties and related trusts and to a prospective debt or equity financing provider in connection with the Proposal, in each case on a need to know basis and where those persons undertake to keep information disclosed confidential or are otherwise bound by or subject to a similar confidentiality obligation.

## **9 Warranties**

### **9.1 Mutual warranties**

Each party represents and warrants to the others that, as at the date of this Agreement:

- a it is duly incorporated under the laws of New Zealand;
- b it has the power and authority to sign this Agreement and perform and observe all its terms;
- c this Agreement has been duly executed and is a legal valid and binding agreement enforceable against it in accordance with its terms; and
- d it is not bound by any contract which may restrict its right or ability to enter into or perform this Agreement.

## **10 Relationship between the parties**

### **10.1 No partnership or joint venture**

- a Nothing in this Agreement will be construed as giving rise to a partnership, joint venture, fiduciary relationship or agency relationship between the parties.
- b No party may act as the agent of, assume any obligation or responsibility on behalf of the other party or in any way bind or pledge the credit of the other party.

### **10.2 No control over voting rights**

Notwithstanding any other provision of this Agreement, nothing in this Agreement or any other document contemplated by or entered into to give effect to this Agreement, confers on either party the ability or right to hold or control (as defined in the Takeovers Code) the voting rights or any other rights attaching to other party's MPG Shares.

### **10.3 Parties now associates**

- a The parties acknowledge that by executing this Agreement they will become "associates" (as defined in the Takeovers Code) of each other.
- b Other than as expressly contemplated by this Agreement, for so long as they are "associates" of each other, each party agrees not to acquire any further legal or beneficial interest in any MPG Shares, increase their respective holding or control (as defined in the Takeovers Code) of voting rights in MPG or take any other action, in each case that would be in breach of the Takeovers Code or the FMCA.

### **10.4 Separate tax and accounting obligations**

- a Each party is responsible for its own tax, accounting and record keeping obligations.
- b No party is responsible for the obligations of any other party under the tax laws of any relevant jurisdiction, unless otherwise specifically provided for in a Transaction Document.

## **11 General**

### **11.1 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- a must be in writing;
- b must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
  - i if to Takutai:

Address: 1 Musick Point Road, Bucklands Beach, Auckland 2012

Email: peter@takutai.com

For the attention of: Peter Wells

ii if to MSL:

Address: Level 35, Vero Centre, 48 Shortland Street, Auckland

Email: raphael@artemiscapital.co.nz

For the attention of: Raphael Yan

c must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director or authorised agent of, that party; and

d must be delivered by hand or sent by email to the address, in accordance with clause 11.1b.

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement is taken to be received by the addressee:

e in the case of email:

i when the sender receives an automated message confirming delivery; or

ii if later, two hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; and

f in the case of delivery by hand, on delivery,

but if the communication is taken to be received (in the place of receipt) on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

## 11.2 Entire agreement

This Agreement contains the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

## 11.3 Amendment

This Agreement cannot be amended, modified, varied or supplemented except in writing signed by the parties.

## 11.4 Assignment

This Agreement is binding on, and continues for the benefit of, the parties and their respective successors and permitted assignees or transferees. No party can assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party.

## 11.5 Specific performance

Each party acknowledges that, in the event of any breach or threatened breach of this Agreement by a party (the '**first party**'), damages may not be an adequate remedy and the other party (the '**non-breaching party**') may seek specific performance of the terms of this Agreement or injunctive relief or any other similar remedy, in addition to any other remedies available at law or in equity under or independently of this Agreement. In any proceeding

brought by the non-breaching party seeking such equitable relief for a breach or threatened breach of this Agreement, the first party must not claim that the breach or threatened breach is one which may not, or ought not to be, the subject of equitable relief.

**11.6 Severability**

If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision is to be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or, if this is not possible, then such provision must be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.

**11.7 Further assurances**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement.

**11.8 Future obligations**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement.

**11.9 No waiver**

No failure or delay on the part of either party to exercise any right or remedy under this Agreement is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under this Agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

**11.10 Compliance with law**

Nothing in this Agreement will require either party to do any act or thing in contravention of the Takeovers Code, the Companies Act or the FMCA.

**11.11 Counterparts**

This Agreement may be signed in any number of counterparts (included by scanned PDF) all of which, when taken together, constitute one and the same instrument.

**11.12 Governing law**

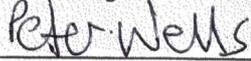
This Agreement is governed by, and must be construed in accordance with, the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

**Execution**

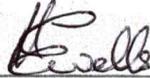
**Signed for Takutai Limited by:**



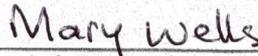
Director's signature



Director's name

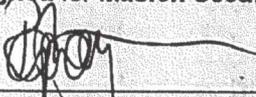


Director's signature

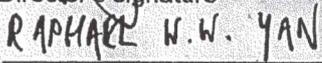


Director's name

**Signed for Masfen Securities Limited by:**



Director's signature



Director's name