

14 February 2020



## INITIAL RESPONSE TO UNSOLICITED BID: TAKE NO ACTION

Universal Coal Plc ("**Universal**" or the "**Company**") (ASX: UNV) refers to its announcement on 12 February 2020 regarding the unsolicited bid by TCIG Resources Pte Ltd ("**TerraCom BidCo**") to acquire all of the shares in the Company that it does not already own ("**Unsolicited Bid**"). The committee of the Company's board constituted to consider the Unsolicited Bid ("**Bid Committee**") provides the following views on the Unsolicited Bid and maintains its recommendation that Universal shareholders **TAKE NO ACTION**.

The Bid Committee and its advisors have undertaken a preliminary review of the offer document published by TerraCom BidCo in respect of the Unsolicited Bid on 12 February 2020 ("**Offer Document**"). That review has identified significant issues that should concern Universal shareholders, including:

- shareholders not being treated in an equal manner;
- shareholders not being afforded sufficient time and information to enable them to reach properly informed decisions; and
- it not being clear that TerraCom BidCo would be able to fulfil the cash component of the Unsolicited Bid in full.

These issues offend certain fundamental principles of the UK City Code on Takeovers and Mergers ("**City Code**") which, whilst not applying to the Unsolicited Bid, are relevant under the articles of association of Universal ("**Articles**"). This is the case because, in certain circumstances, the Articles provide that following the purchase of shares in Universal, the purchaser would be required to make a takeover offer on terms no less favourable (in the opinion of the board) to shareholders than they would have been obliged to make had the City Code applied. The Bid Committee is actively considering the extent to which the Unsolicited Bid breaches these provisions in the Articles and, accordingly, whether it may be entitled under the Articles to apply certain sanctions to TerraCom BidCo, including suspending the voting rights attached to any Universal shares held by TerraCom Bidco and to be acquired pursuant to the Unsolicited Bid.

Other significant issues concerning the Unsolicited Bid include:

1. Based on disclosures in the Offer Document, the consideration payable under the Unsolicited Bid ("**Offer Consideration**") has a cash component that does not appear to be fully funded from the existing cash reserves of TerraCom<sup>1</sup>.
2. The Offer Consideration has a significantly lower cash component than that previously paid by TerraCom Bidco to acquire shares from a major shareholder in November 2019. The implied offer price of approximately A\$0.293 per Universal share<sup>2</sup> (the "**Implied Offer Price**") is at a discount to the price paid in November 2019<sup>3</sup>, such unequal treatment being considered unfair to the existing Universal shareholders.
3. The Offer Consideration may significantly undervalue the Company based on recent premia paid in control transactions for ASX entities.<sup>4</sup>
4. The structure of the Offer Consideration materially increases the risk profile for Universal shareholders should they accept the Unsolicited Bid, given approximately two-thirds of the Offer Consideration is comprised of ordinary shares in TerraCom<sup>5</sup>.
5. The Unsolicited Bid involves pre-bid agreements with a small number of large institutional shareholders. The Bid Committee is concerned that the expedited timeline of these arrangements is capable of delivering control of Universal to TerraCom in a way that is not fair to all Universal shareholders, in that shareholders may not be provided with adequate time to properly evaluate the Unsolicited Bid.
6. The Bid Committee considers that the Offer Document contains defective disclosure in respect of the information that is required to be disclosed to shareholders under the Australian *Corporations Act 2001 (Cth)*. Such deficiencies adversely impact the ability of Universal shareholders to make an informed assessment and decision regarding the Unsolicited Bid.

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1 Based on the proforma balance sheet in the Offer Document on page 87 showing a cash and cash equivalents position of \$(10.878)m.

2 Based on the Offer Document stating the offer consideration of A\$0.10 per Universal share in cash plus 0.6026 TerraCom shares per Universal share, and using the last close price of TerraCom shares on 31 January 2020 of A\$0.32 per share, the Implied Offer Price is approximately A\$0.293 per Universal share. Quoted prices are sourced from IRESS.

3 The November 2019 Acquisition was first announced on 30 October 2019 and completed on 13 November 2019. Based on TerraCom Bidco's Notice of initial substantial holder on 14 November 2019, total consideration was A\$34,620,382.36 for 104,467,056 Universal shares equating to approximately A\$0.331 per Universal share. Based on TerraCom's Appendix 3B released on 14 November 2019, TerraCom issued 34,203,104 fully paid ordinary shares at a deemed value of A\$0.5061 per share which references a 6 month VWAP in the 30 October 2019 announcement. Therefore, the consideration per Universal share offered was approximately A\$0.166 in cash plus 0.3274 TerraCom shares per Universal share. Using the TerraCom last close price of A\$0.40 per share on 29 October 2019, being the day before the 30 October 2019 announcement, this equates to a total consideration of approximately A\$0.297 per Universal share. Quoted prices are sourced from IRESS.

4 Average premia based on unsolicited, successful transactions over A\$100 million announced in the past 5 years involving ASX-listed metals and mining companies as targets. Transactions include: Sandfire Resources Limited / MOD Resources Limited (January 2019), Readstone Corporation Pty Ltd / Atlas Iron Limited (June 2018), ERAMET SA / Mineral Deposits Limited (April 2018), Metals X Limited / Aditya Birla Minerals Limited (October 2015) and Zijin Mining Group Co. / Norton Gold Fields Limited (January 2015).

5 Based on A\$0.10/share offered in cash per the Offer Document, and footnote 2 demonstrating the Implied Offer Price equates to A\$0.293 per share, this implies the cash component is 34.1% or approximately 1/3, therefore the equity component of the Offer Consideration is approximately 2/3.

The Bid Committee strongly encourages all shareholders to **TAKE NO ACTION** in respect of the Unsolicited Bid until such time as the Bid Committee completes its evaluation, and receives and considers the opinion of Deloitte Corporate Finance Pty Ltd (“**Deloitte**”) in its Independent Expert Report.

## **BID COMMITTEE’S KEY CONCERNS IN RELATION TO THE UNSOLICITED BID**

Outlined in further detail below are the Bid Committee’s key concerns in relation to the Unsolicited Bid, which form the basis for the Bid Committee to maintain its current recommendation that Universal shareholders **TAKE NO ACTION** in respect of the Unsolicited Bid.

### **1. The cash component of the Offer Consideration does not appear to be fully funded from the existing cash reserves of TerraCom**

- The Offer Document states that “TerraCom Bidco will fund the cash component of the Offer Consideration from existing cash resources”<sup>6</sup>. However, the pro forma balance sheet prepared on the basis of TerraCom acquiring 100% of Universal and presented on page 87 of the Offer Document, states that after the proposed acquisition of Universal completes, the merged group (comprising TerraCom and Universal) will have a pro forma “Cash and cash equivalents” balance of \$(10.8)m. This may suggest that TerraCom has insufficient cash reserves to fund the Unsolicited Bid. TerraCom provides no further explanation of how the cash component of the Offer Consideration is, or will be, funded, nor is any confirmation given by an independent financial advisor that TerraCom Bidco is able to fully fund the Offer Consideration.

### **2. The Unsolicited Bid does not afford current Universal shareholders equivalent treatment compared to that given to a large institutional shareholder in the November 2019 Acquisition**

- The consideration offered by TerraCom BidCo to Coal Development Holding B.V. for TerraCom BidCo’s initial 19.995% interest acquired in Universal as announced in TerraCom BidCo’s notice of initial substantial holder on 14 November 2019 (the “**November 2019 Acquisition**”) comprised a greater cash consideration per share of approximately A\$0.166<sup>3</sup> against the A\$0.10 in TerraCom BidCo’s Offer, which preferentially treats Coal Development Holding B.V. compared with all Universal shareholders who receive the Unsolicited Bid.
- In addition, the Implied Offer Price is at a **DISCOUNT** to the price previously paid by TerraCom Bidco in the November 2019 Acquisition<sup>7</sup>.

### **3. The Offer Consideration may significantly undervalue the Company based on control premia precedents for ASX-listed transactions:**

- The Implied Offer Price of A\$0.293 (or A\$0.266 based on TerraCom’s last closing price of A\$0.275 on 13 February 2020) implies a premium of only 24.6% to Universal’s closing price on

6 Page 20 of the Offer Document.  
7 Referencing the Implied Offer Price of A\$0.293 being lower than the A\$0.331 or A\$0.297 offered as part of the November 2019 Acquisition per footnote 3.

31 January 2020<sup>8</sup>, which is materially below recent precedent ASX transaction premia in the metals and mining sector, and does not represent an adequate control premium for Universal shareholders.

- The Offer Consideration is significantly below the value of previous offers made in the past 12 months for Universal shares where a change of control transaction was proposed<sup>9</sup>.
- The Bid Committee is concerned that the Implied Offer Price may significantly undervalue the Company and awaits an Independent Expert Report from Deloitte in order to determine whether or not the Unsolicited Bid is fair and reasonable to all Universal shareholders.

**4. The structure of the Offer Consideration materially increases the risk profile for Universal shareholders should they accept the Unsolicited Bid, given that approximately two-thirds of the Offer Consideration is constituted by ordinary shares in TerraCom.**

- Universal shareholders will receive approximately two-thirds of their consideration in the form of shares in TerraCom, a highly leveraged company<sup>10</sup>.
- The TerraCom share price has underperformed relative to the Universal share price over the past 6 months (2 August 2019 to 31 January 2020, the last close prior to the Unsolicited Bid being made) by approximately 27%<sup>11</sup>, which may be due to the significant risks associated with TerraCom's highly leveraged balance sheet and net loss position as at 30 June 2019 as referenced on pages 66, 85 and 87 of the Offer Document.
- Additionally, the TerraCom shares offered as consideration in the Unsolicited Bid are highly illiquid based on trading from the last 12 months up to 31 January 2020, at approximately 195,000 shares per day representing approximately 0.4% of the share register per day<sup>12</sup>.

**5. The Unsolicited Bid involves pre-bid agreements with a small number of large institutional shareholders. The Bid Committee is concerned that the expedited timeline of these arrangements is capable of delivering control of Universal to TerraCom in a way that is not fair to all Universal shareholders, in that shareholders may not be provided with adequate time to properly evaluate the Offer.**

- The Offer Document refers to having "received support from UNV Shareholders, representing 27.3% of UNV's issued share capital". Based on the Offer Document, that "support" has come from only four shareholders, three of which are related to each other<sup>13</sup>. The other "supporting" shareholder (which also sold TerraCom its 19.995% stake in Universal under the November

8 Quoted prices are sourced from IRESS.

9 Refer ASX Announcement dated 8 April 2019 for details on the Afrimat Resources and Ata Resources-lead consortium offers.

10 Refer to Universal's announcement dated 6 February 2020 regarding observations on the gearing of TerraCom

11 Source IRESS assuming the TerraCom closing price at 2 August 2019 and 31 January 2020 is rebased to the Universal closing price on 2 August 2019.

12 Source: IRESS

13 Brasidas Investment Management LLC, on behalf of Brasidas Asia Event Driven Fund LP; Brasidas Investment Management LLC, on behalf of Walleye Manager Opportunities LLC and Brasidas Investment Management LLC, on behalf of Boothbay Absolute Return Strategies LP, being private funds advised by Brasidas Investment Management LLC (refer to TerraCom announcement 3 February 2020 and Form 603 Notice of initial substantial shareholder notice for Universal dated 2 May 2019 and lodged with Universal on 3 May 2019).

2019 Acquisition) had its nominee directors on the board of Universal removed at the AGM on 29 November 2019<sup>14</sup>.

**6. The Bid Committee considers that defective disclosure in the Offer Document adversely impacts on the ability Universal shareholders to reach a properly informed decision on the Unsolicited Bid.**

- The Offer Document, as it relates to an offer for shares in TerraCom, constitutes a prospectus that is a regulated disclosure document under the Australian Corporations Act. The Bid Committee considers that the Offer Document contains defective disclosure in respect of the information that is required to be disclosed to shareholders.
- By way of example:
  - In neither substance, nor form, the Offer Document does not consistently explain to Universal shareholders the effect of the Unsolicited Bid on TerraCom or its securities as part of a merged group, which includes Universal at various ownership thresholds. Ownership scenarios are relevant given that, if the Unsolicited Bid completes, TerraCom may control as little as 47.3% and up to 100% of Universal's share capital. There is no clear statement of the intentions in respect of the merged group in relevant ownership scenarios, other than an intention to conduct an operational review of Universal's operations, assets and structure<sup>15</sup>.
  - The information on TerraCom is largely confined to publicly available and outdated information. Investors are left to consult the TerraCom website and other sources to do, in effect, their own research.
  - There is inadequate disclosure of the risk flowing from the highly leveraged financial structure. Further, there does not appear to be any significant disclosure in the Offer Document of the nature and terms of the funding facilities that will be held over the merged group's assets.
  - There is no disclosure in respect of the impact on TerraCom with regard to a change in the scale of its operations and the extent to which this may require shareholder approval.
  - The Offer Document does not present the information that Universal shareholders require in a clear, concise and effective way. The information that is provided is spread throughout the Offer Document, without summaries or cross-referencing, and is not presented in a way that facilitates an easy understanding of the effects of the Unsolicited Bid on TerraCom, being the entity in which Universal shareholders are being asked to invest.

<sup>14</sup> African Minerals Exploration & Development Fund SICAR on behalf of Coal Development Holdings B.V. (refer to TerraCom announcement 3 February 2020 and Universal announcement lodged on 2 December 2019).

<sup>15</sup> Page 94 of the Offer Document.

Such deficiencies adversely impact on the ability of Universal shareholders to make an informed assessment and decision in respect of the Unsolicited Bid.

In light of the above concerns and takeover protections contained in the Articles, the Bid Committee is currently considering its options, including commencing legal proceedings.

The Bid Committee will keep Universal shareholders informed of all material developments relating to the Unsolicited Bid.

The Bid Committee

For further information please contact:

Mark Eames

Non-executive Interim Chairman

T: +61 400 586 747

Authorised by: Mark Eames, Interim Chairman

UK REGISTERED OFFICE	AUSTRALIAN REGISTERED OFFICE	OPERATIONAL OFFICE
6th floor, 60 Gracechurch St	Level 12, 680 George Street	467 Fehrsen Street
London EC 3V 0HR	Sydney NSW 2000	Brooklyn, 0181, Pretoria
United Kingdom	Australia	South Africa

#### About the Company:

Universal Coal Plc (incorporated and domiciled in the United Kingdom) is an ASX listed mid-tier +10Mtpa coal mining company (ASX:UNV) which operates three thermal coal mines in South Africa; the 4.0Mtpa opencut Kangala Colliery, the 3.7Mtpa opencut and underground New Clydesdale Colliery and the 3.4Mtpa opencut North Block Complex. Universal's fourth colliery is currently under construction and is set to deliver coal product at the rate of 1.2Mtpa from November 2019.

Universal's mines include both opencut and bord and pillar underground operations that are delivering product into the South African and international coal markets. They have an executive team possessing a proven track record of developing and managing profitable operations with experienced in-house technical and commercial competencies and good relationships with service providers, traders and end users.

Universal is delivering strong positive cash flow from its operations and is committed to building a sustainable mid-tier coal mining company providing investors with exposure to profitable coal mines.

Further information on Universal can be found at [www.universalcoal.com](http://www.universalcoal.com)

### **Important information**

This announcement (including information incorporated by reference in this announcement), and other information published by Universal may contain statements that are or may be deemed to be forward looking statements. All statements other than statements of historical facts included in this announcement may be forward-looking statements. Without limitation, any statements preceded or followed by or that include the words "targets", "plans", "believes", "expects", "aims", "intends", "will", "may", "anticipates", "estimates", "projects" or words or terms of similar substance or the negative thereof, are forward looking statements. For the avoidance of doubt, forward-looking statements include, but are not limited to, statements relating to the following: (i) future capital expenditures, expenses, revenues, earnings, synergies, economic performance, indebtedness, financial condition, dividend policy, losses and future prospects; (ii) business and management strategies and the expansion and growth of the Universal group of companies or its operations; and (iii) the effects of government regulation on the Universal group of companies or its business.

The forward-looking statements are not guarantees of future performance. Such forward-looking statements involve known and unknown risks and uncertainties that could significantly affect expected results and are based on certain key assumptions. Many factors could cause actual results to differ materially from those projected or implied in any forward-looking statements. These factors include, but are not limited to, changes in political and economic conditions, changes in the level of capital investment, retention of key employees, changes in customer preferences, success of business and operating initiatives and restructuring objectives, impact of any acquisitions or similar transactions, changes in customers' strategies and stability, competitive product and pricing measures, changes in the regulatory environment, fluctuations of interest and exchange rates, and the outcome of any litigation.

Due to such uncertainties and risks, readers are cautioned not to place undue reliance on such forward-looking statements, which speak only as of the date of this announcement. All subsequent oral or written forward-looking statements attributable to any member of the Universal group of companies or any of their respective directors, officers or employees or any persons acting on their behalf are expressly qualified in their entirety by the cautionary statement above. Universal disclaims any obligation to update any forward-looking or other statements contained in this announcement, except as required by applicable law.

No statement in this announcement is intended as a profit forecast or estimate for any period and no statement in this announcement should be interpreted to mean that earnings or earnings per share for Universal for the current or future financial years would necessarily match or exceed the historical published earnings or earnings per share for Universal.

Certain figures in this announcement have been subjected to rounding adjustments. Accordingly, figures shown for the same category presented in different places may vary slightly.

Universal has relied on publicly available information and statements issued by TerraCom in this announcement for which TerraCom is responsible.