



MCMAHON CLARKE LEGAL



Deed of compromise

Jag Ply Pty Ltd 118 622 450 (**JAG**)

Peter Cranston Wintour (**Wintour**)

Plywood Association of Australasia Limited ACN 009 704 901 (**PAA**)

3 October 2008

Date	This Deed is made on the date noted on page 8 of this document.
Parties	<p>Jag Ply Pty Ltd 118 622 450 of 10 Barlee Court, Elanora in the state of Queensland</p> <p style="text-align: right;">(JAG)</p> <p>and</p> <p>Peter Cranston Wintour of 10 Barlee Court, Elanora in the state of Queensland</p> <p style="text-align: right;">(Wintour)</p>
	and
	<p>Plywood Association of Australasia Limited of ACN 009 704 901 of c/- Messrs McKays, Solicitors, Level 6, 239 George Street, Brisbane</p> <p style="text-align: right;">(PAA)</p>
Introduction	<p>A. On 2 August 2006 PAA commenced the Proceedings against JAG and Wintour.</p> <p>B. JAG and Wintour have filed a defence to the Proceedings.</p> <p>C. PAA, JAG and Wintour have agreed to settle the dispute on the terms and conditions contained in this Deed.</p> <p>D. The terms of this Deed follow.</p>
Schedules	<p>The following Schedules form part of this Deed:</p> <p>A. Schedule 1—Dictionary.</p> <p>B. Schedule 2—Rules for interpretation.</p> <p>C. Schedule 3—Media release</p> <p>D. Schedule 4—Australian Standard AS/NZS 2269:2004</p>

CONTENTS

1. Parties' obligations	1
1.1 Actions on signing of this Deed	1
2. Discontinuance and Costs	2
2.1 Delivery of notices	2
2.2 Filing of notices	2
2.3 Costs of Principal Proceedings	2
3. Media Release	2
4. Release	3
4.1 Release by PAA	3
4.2 Release by JAG and Wintour	3
4.3 Undertaking by PAA	3
5. Pleading as a bar	3
6. Costs	3
7. Notices	4
7.1 Form of Notices	4
7.2 Method and address for giving Notices	4
7.3 Time of delivery	4
7.4 Notices by post	4
7.5 Notices by facsimile	4
7.6 Signatures	5
8. General provisions	5
8.1 Variations	5
8.2 Further assurances	5
8.3 Liability of parties	6
8.4 Counterparts	6
8.5 Warranty of authority	6
8.6 Severability	6
8.7 Delivery as a deed	7
8.8 Entire agreement	7
Schedule 1—Dictionary	9
Schedule 2—Rules for interpretation	11
Schedule 3—Media release	12
Schedule 4—Australian Standard AS/NZS 2269:2004	13

TERMS

1. Parties' obligations

1.1 Actions on signing of this Deed

On the date of this Deed—

- (a) JAG and Wintour must—
 - (i) Immediately cease representing (whether expressly or impliedly and whether by affixation of a label or by any other means) that any sheet of plywood complies with the Standard, in particular, as to F-Grade as determined via machine stress-grading as referred to in the Standard.
 - (ii) Immediately cease affixing to any sheet of plywood or otherwise marking any such sheet of plywood with any reference to the Standard.

Before resuming any of the conduct stated in clause 1.1(a)(i) and (ii)—

- (b) JAG and Wintour must—
 - (i) Provide notice in writing to PAA of JAG and Wintour's intention to resume the conduct stated in clause 1.1(a)(i) and (ii) 6 weeks prior to actually resuming the conduct.
 - (ii) The notice referred to in clause 1.1(b)(i) must include—
 - A. an assurance from JAG and Wintour that they will only affix labels referring to the Standard or otherwise marking any sheets of plywood with any reference to the Standard where to do so would comply with clause 1.12 (Branding) of the Standard including requirements for branding to be applied at the point of manufacture (that is, at the site of the manufacturing mill).
 - B. particulars of the source of the plywood, including name and address of the manufacturer, and
 - C. the basis upon which JAG and Wintour are confident of compliance with the Standard.

From and after the date of this Deed—

- (c) any person who has bought from JAG (or any agent of JAG) a sheet of plywood to which JAG has affixed a label making reference to the Standard, or in respect of which JAG has made a representation that the sheet complied with the Standard (whether by direct reference to the Standard or by reference to the sheet having a particular F-grade) shall, provided the sheet is loose material only and has not been installed or otherwise fixed or altered from its condition at the time of purchase, upon return of the sheet to JAG, be entitled to a refund of the amount paid for the sheet together with that party's reasonable costs of returning the sheet to JAG.
- (d) The parties acknowledge that paragraph (c) above is a promise made for the benefit of third parties and enforceable by any third party to whom it applies pursuant to Section 55 of the *Property Law Act 1974* (Qld).

2. Discontinuance and Costs

2.1 Delivery of notices

Contemporaneously with the signing of this Deed, PAA must deliver to JAG and Wintour's solicitors a signed notice of discontinuance consenting to the discontinuance of the Proceedings.

2.2 Filing of notices

Within 7 days of the date of this Deed, JAG must procure the counter-signing, by JAG and Wintour's solicitors, of the notice of discontinuance referred to in clause 2.1 and file it with the court.

2.3 Costs of Principal Proceedings

Each party to the Proceedings will pay their own legal professional costs and disbursements of and incidental to the proceedings, including any costs reserved, costs in the proceeding and costs in respect of which no order has been made, and shall not be entitled to seek or claim payment of any costs incidental to the proceedings from any other person.

3. Media Release

The parties agree that the media release contained in Schedule 3 to this Agreement will be published on the websites of PAA and JAG for a period of no less than two months after the date of this Agreement, and that each party may publish the release elsewhere as it sees fit on the basis that it is approved by all of the parties.

4. Release

4.1 Release by PAA

PAA releases JAG and Wintour on and after the date of this Deed from any liability for any claim in damages at law or pursuant to statute and from any other claim for compensation whether at law, in equity or pursuant to statute for all claims which PAA may have or be entitled to bring or would but for this Deed have or be entitled to bring against JAG and Wintour at law or in equity or under the provisions of any statute, in relation to—

- (a) the Proceedings
- (b) the disputes to which the Proceedings relate, and
- (c) any and all businesses conducted by JAG and Wintour before the Deed Date.

4.2 Release by JAG and Wintour

- (a) JAG and Wintour release PAA on and after the date of this Deed from all claims which JAG and Wintour may have or be entitled to bring or would but for this Deed have or be entitled to bring against PAA at law or in equity or under the provisions of any statute, in relation to—the Proceedings, and
- (b) the disputes to which the Proceedings relate.

4.3 Undertaking by PAA

PAA undertakes not to commence any proceeding against JAG or Wintour which relies only on facts, matters and circumstances which arose before the date of this Deed and were substantially connected with the subject matter of the proceedings

5. Pleading as a bar

The parties agree and acknowledge that this Deed may be pleaded as a bar to any legal proceedings based on any claim that is released under this Deed.

6. Costs

Each party shall bear its own costs (including legal costs) of and incidental to the preparation, negotiation and execution of this Deed.

7. Notices

7.1 Form of Notices

Notices given under this Deed must be—

- (a) in writing
- (b) signed by the party giving the Notice or its Authorised Representative, and
- (c) addressed to the Notice Address of the person to whom it is to be given.

7.2 Method and address for giving Notices

Notices must be given or served to or at the Notice Address of the person receiving the Notice in one of the following ways—

- (a) delivery by hand
- (b) posting by pre-paid security or certified mail
- (c) transmitting by facsimile, or
- (d) sending by email, or any other electronic means.

7.3 Time of delivery

If, after 8:30 am and before 5:00 pm local time on a Business Day in the place of delivery, a party delivers a Notice by hand or by email, then the Notice will be taken as given on the day of delivery or transmission. If delivery is made before 8:30 am, but after 12:00 am on that same day, then the delivery is taken to have occurred at 8:30 am on that day so long as it is a Business Day. If any delivery is made after 5:00 pm on the Business Day, then delivery is taken to have occurred on the next Business Day.

7.4 Notices by post

If a party gives notice by post, then the Notice will be taken as given on the second Business Day after the Notice is posted.

7.5 Notices by facsimile

- (a) If a party gives notice by facsimile, then the Notice will be taken as given on the day of transmission if the transmission report states that the transmission was completed before 5:00 pm on a Business Day, and that it was sent in full and without error, and no objection is received from the

recipient. Otherwise, the Notice will be taken to be given on the next Business Day following the day of transmission.

- (b) If a party gives notice by facsimile and the transmission is not fully intelligible, then the party giving the Notice may not rely on this clause 7.5 to prove the giving of the Notice.
- (c) A facsimile may not be relied on if the party giving the Notice has reason to believe the transmission or part of the transmission is unintelligible.
- (d) A party is not entitled to object to a facsimile as being not fully intelligible unless the party requests re-transmission within two hours (being hours between 8:30 am and 5:00 pm on the Business Day in the place of delivery) of completion of transmission. If a facsimile transmission is made within two hours before 5:00 pm on the Business Day and is unintelligible, then the receiving party has until 10:30 am on the next Business Day to request re-transmission.

7.6 Signatures

- (a) A Notice must be signed by the party giving the Notice or its Authorised Representative.
- (b) The appearance of the name of a person signing at the foot of the document is sufficient evidence of signing.

8. General provisions

8.1 Variations

No variation of this Deed nor consent to a departure by a party from a provision will be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent will be effective only to the extent to or for which it may be made or given.

8.2 Further assurances

Each party to this Deed will do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by Notice from another party to carry out and give effect to the terms and intentions of this Deed and to perfect, protect and preserve the Rights of the other parties to this Deed.

8.3 Liability of parties

If a party consists of more than one person—

- (a) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them
- (b) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly, and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

8.4 Counterparts

- (a) This Deed may be executed in one or more counterparts and all counterparts taken together constitute one deed.
- (b) The parties further agree communication of execution of this Deed by a party may, as an alternative to any other lawful method, be completed by successfully transmitting a facsimile of this Deed bearing execution by that party to all other parties.

8.5 Warranty of authority

Each person signing this Deed—

- (a) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person, and
- (b) as an Authorised Representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Deed on behalf of that party.

8.6 Severability

This Deed will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable—

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation, or

- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Deed will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

8.7 Delivery as a deed

Subject to express provisions in this Deed to the contrary, each party by signing or executing this Deed is deemed to unconditionally sign, seal and deliver this Deed as a deed, with the intention of being immediately legally bound by this Deed.

8.8 Entire agreement

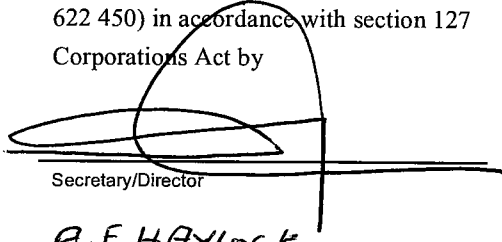
The parties acknowledge that—

- (a) this Deed, together with Schedules 1, 2, 3 and 4, comprises the whole of the agreement between the parties in relation to the subject matter of it, and
- (b) no further or other covenants are implied or arise between the parties by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by either party to the other on or before the execution of this Deed and the existence of any implied, collateral or other agreement is negated.

Execution

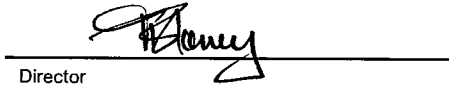
This Deed is made this 6th day of OCTOBER 2008.

Signed by Jag Ply Pty Ltd (ACN 118 622 450) in accordance with section 127 Corporations Act by

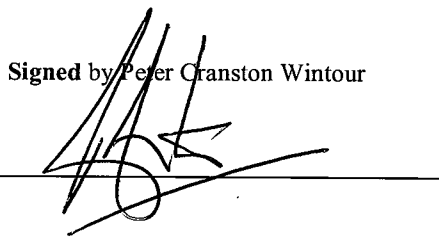

Secretary/Director

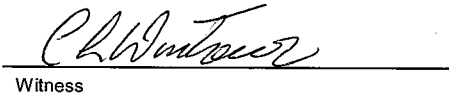
A.F. HAYLOCK.

Name (please print)

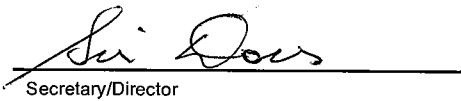

Director

TREVOR BLANEY
Name (please print)

Signed by Peter Cranston Wintour



Witness

Signed by Plywood Association of Australasia Pty Ltd (ACN 009 704 901) in accordance with section 127 Corporations Act by


Secretary/Director

SIMON JAMES DORKIES.

Name (please print)


Director

BENJAMIN ROBERT SAWLEY.

Name (please print)

Schedule 1—Dictionary

Authorised Representative	<p>In respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative, and in respect of a party which is a corporation—</p> <p>(a) a company secretary or director, or any officer of the corporation whose title or office includes the words “manager” or “director”, or</p> <p>(b) a person acting with the title or in the office of manager or director.</p>
Business Day	Any day other than a Saturday, Sunday or public holiday in Australia or any State of Australia.
Deed	This Deed including all of its annexures, schedules and recitals.
Notice	A written notice, consent, approval, direction, order or other communication required to be provided pursuant to the terms of this Deed.
Notice Address	<p>(a) The following address or facsimile number—</p> <p>Jag Ply Pty Ltd</p> <p>Service address: 10 Barlee Court, Elanora QLD</p> <p>Facsimile number: 07 5522 6709</p> <p>Attention: Peter Wintour</p> <p>Peter Cranston Wintour</p> <p>Service address: 10 Barlee Court, Elanora QLD</p> <p>Facsimile number: 07 5522 6709</p> <p>Attention: Peter Wintour</p> <p>PAA</p> <p>Service address: c/- Messrs McKays, Solicitors, Level 6, 239 George Street, Brisbane QLD</p> <p>Facsimile number: 07 3221 5379</p> <p>Attention: Ref: TXT/KLM]</p> <p>(b) or where a party gives Notice to all other parties of another address or number, the last address or facsimile</p>

number so notified.

Proceedings	Action number QUD 297/06 filed by PAA against JAG and Wintour in the Brisbane registry of the Federal Court of Australia.
Right	Includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.
Standard	AS-NZS 2269 2004 (including any subsequent revisions and amendments), being annexure A to this Deed.

Schedule 2—Rules for interpretation

In this Deed unless the context indicates a contrary intention—

- (a) words denoting any gender include all genders
- (b) the singular number includes the plural and vice versa
- (c) references to any legislation includes any legislation which amends or replaces that legislation
- (d) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns
- (e) a person includes companies and corporations and vice versa

- (f) the construction least favourable to the party responsible for drafting the Deed will not be adopted against that party merely because that party put forward the first draft of this Deed
- (g) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause
- (h) amounts of money are expressed in Australian dollars unless otherwise expressly stated
- (i) a reference to a document includes any variation or replacement of it
- (j) a reference to any thing includes the whole or each part of it, and
- (k) the defined terms in Schedule 1 have the meaning given them in that schedule except where the context otherwise requires.

Schedule 3—Media release

In 2006 the PAA brought an action against JAG and Mr Wintour for making statements that plywood tested by it complied with AS/NZS 2269 (the Standard) in circumstances where the PAA feared there was a risk those statements could be false.

JAG and Mr Wintour denied the allegations and have defended the claim.

However, the parties have now reached an out of court settlement pursuant to which the court proceedings will be discontinued.

JAG and Mr Wintour have agreed to a number of steps to address the PAA's concerns. Importantly, JAG and Mr Wintour must immediately cease representing that sheets of plywood comply with the Standard or that they have a particular F-Grade, and can resume this action only after giving the PAA details of how they will ensure compliance with all aspects of the Standard.

JAG and Mr Wintour have also agreed that any unused sheets of plywood sold by JAG or its agent with labels or marks referring to the Standard may be returned in exchange for a refund of the sale price.

Schedule 4—Australian Standard AS/NZS 2269:2004
