**BRIERLEY KHAN**

**EMAIL**

**From:** Thomas Weinhart

**Sent:** [date of session]

**To:** Brierley Khan Trainee

**Subject:** Project Emerald Facility Agreement

Thanks for your initial research on the above deal.

You will see that Michelle has now forwarded us the draft mandate letter together with the draft term sheet attached for this deal. Please review these drafts. Michelle raises a few questions in her e-mail, but before you address those, could you consider the following:

1. Why is it important the term sheet is expressed ‘subject to contract’?
2. The term sheet mentions underwriters. Why is it important the loan for this transaction is underwritten?
3. Why are there two separate facilities?
4. What is the significance of this loan being classified as a green loan?
5. Do you have any concerns about the ‘Availability Period’ for Facility A being one month? Why is there no cap for Facility B?
6. What type of repayment schedule has been agreed for this transaction? In what alternative ways could repayments be scheduled?
7. Why are the fees set out in separate fee letters?
8. Which entities are giving guarantees and security in respect of the loan?
9. Why are the ‘Conditions Precedent’ important for the Borrower? Should the Borrower be concerned about agreeing to any of these ‘Conditions Precedent’?
10. Why have only items (a)-(c) been included in ‘Representations and Warranties’, and not more?
11. Which of the ‘Undertakings’ have been included to comply with Green Loan Principles?
12. What is the significance of the ‘Costs’ provision?
13. What is the function of the ‘Majority Lenders’ in a syndicated loan?
14. Why do the Lenders impose time-limits in the ‘Acceptance’ provision?
15. Why will the Borrower be concerned about its’ confidential information in this transaction and how will it ensure a lender is restricted from disclosing confidential information?

Please make a note of your responses to these points and also prepare a response to the specific points Michelle raises in her e-mail.

Can we speak first thing tomorrow on this? I’ll set up a call with Michelle tomorrow afternoon.

Thomas

Thomas Weinhart

Partner

Brierley Khan LLP

**From**: Michelle Harris <Michelleharris@infinity.com>

**To**: Thomas Weinhart <[ThomasWeinhart@brierley.com](mailto:ThomasWeinhart@brierley.com)

Cc: Max Henderson [maxhenderson@infinity.com](mailto:maxhendersona@infinity.com)

**Subject**: Project Emerald Facility Agreement

Hi Thomas

It was great to see you yesterday and thanks for your advice in relation to the LMA Green Loan Principles which was helpful. EniBank have sent over a first draft of the mandate letter and an amended term sheet; the term sheet now reflects the points we discussed in order that the loan be classified as green so that’s great. Hopefully we can get it signed and start drafting the loan agreement.

I had a couple of points to check with you.

1. The term sheet refers to EniBank taking the roles of Arranger, Agent and Security Trustee. What do these roles involve?
2. The mandate letter mentions that we will prepare the Information Memorandum in conjunction with EniBank. What is the purpose of this document and what information will it need to contain?

Could we have a call tomorrow to discuss these points? I’m free in the afternoon.

Kind regards

Michelle

**Draft (1): [date]**

**EniBank Plc**

Infinity Manufacturing Limited

2 Albert Street

Birmingham

B5 8HP

For the attention of Ms Michelle Harris

[date]

Dear Ms Harris

**Mandate Letter**

We, EniBank Plc as arranger, and [ ] as underwriters (the ‘**Underwriters**’), have pleasure in setting out the terms on which you have mandated EniBank Plc to arrange, and [ ] have agreed to underwrite, the provision of credit facilities (the ‘**Facilities**’) of £450,000,000 to be made subject to the terms of a facilities agreement (the ‘**Facilities Agreement**’) and to the terms set out below.

EniBank Plc commits to arrange and the Underwriters commit to underwrite, subject as described below, the Facilities on the terms set out in the summary terms and conditions enclosed with this letter (the ‘**Term Sheet**’). Terms defined in the Term Sheet and not otherwise defined in this letter shall have the meaning given to them in the Term Sheet.

This proposal is subject to:

(a) the negotiation, execution and delivery of the Facilities Agreement and other related documentation in form and substance satisfactory to the Underwriters and their counsel (the ‘**Facility Documents**’);

(b) there not occurring or becoming known to the Underwriters a material adverse change (or event which, in the opinion of the Underwriters, is likely to result in a material adverse change) in:

(i) the business, assets, operations, financial condition or prospects of the Borrower or any of the Guarantors (the ‘**Obligors**’) taken as a whole since that represented in the Borrower’s or any Guarantor’s latest published audited accounts; or

(ii) the international or domestic money, debt, bank or capital markets during the period from the date of this letter until the date of signature of the Facility Documents,

and the Underwriters not becoming aware of any materially adverse information affecting the Borrower or the Group taken as a whole during the period from the date of this letter until the date of signature of the Facility Documents, in each case as would be likely, in the opinion of the Underwriters, to prejudice syndication of the Facilities; and

(c) payment of the arrangement and underwriting and fees as set out in the Term Sheet.

**1. Syndication:**  You acknowledge our intention, either prior to or after the execution of the Facility Documents, to syndicate participations in the Facilities. We agree to co-operate and to work together with a view to discussing and agreeing any steps which may be necessary to achieve a successful syndication. Within the syndication timetable to be established by us after consultation with you, you will provide us with such information (including but not limited to the information referred to in paragraph 3 (Information Memorandum)) and make available such management, personnel and materials, in each case as are of a type customarily provided or made available for a syndication of this nature (including but not limited to the attendance of senior management for bank presentations at such times as may be mutually agreed). We will manage all aspects of the syndication in consultation with you including the timing of all offers to prospective participants, the acceptance of commitments and the determination of the amounts offered.

**2. Clear Market:** To ensure an orderly and effective syndication of the Facilities, you agree that until the date on which we confirm that general syndication has been completed, you will not, and you will procure that none of your affiliates or subsidiaries will, establish, arrange or syndicate (or attempt to establish, arrange or syndicate) any other facility in the international or domestic bank debt markets except with our prior written consent.

**3. Information Memorandum:** You, in conjunction with EniBank Plc, will prepare the Information Memorandum that will be required to be provided by you to potential lenders in general syndication in consultation with us. You will be responsible for the accuracy of the contents of the Information Memorandum and will warrant the accuracy of the contents in the Facility Documents.

**4. Indemnity:** Whether or not the Facilities are completed or any further documentation relating to the Facilities is signed, you will indemnify and hold us harmless and each of our affiliates and subsidiaries and each of our directors, officers and employees (each an ‘**Indemnified Person**’) from and against any claims, charges, losses, liabilities and expenses which may be incurred by or asserted or awarded against any Indemnified Person (except to the extent that the same arises from the wilful misconduct or gross negligence of such Indemnified Person) as a result of the arranging or syndicating of the Facilities or as a result of any information which is received from or approved by you or any of your affiliates proving to be untrue, inaccurate and/or misleading in any material respect as at the date of issue.

**5.** **Expenses:** You will reimburse us all our reasonable out of pocket expenses (to include the expenses and charges of our affiliates or subsidiaries involved in the Facilities) the fees and disbursements of our advisers and any other fees and expenses payable in connection with the Facilities.

You shall reimburse, or procure the reimbursement of, such expenses in all circumstances and irrespective of whether or not the Facility Documents are signed.

**6.** **Payments:** Each amount payable under this letter shall be payable with all applicable VAT or other applicable taxes and shall be paid free and clear of any set-off or withholding tax of any nature. If any deduction is required to be made in respect of the payment of any sum under this letter, you shall pay such amount as will result after any such deduction in the full amount being paid to us.

All amounts due to us are payable no later than 30 days after the date of receipt of the relevant invoice.

**7. Confidentiality:** This letter is intended for your exclusive use and is provided on the express understanding that you shall treat this letter as strictly confidential except to the extent you are required to make disclosure(s) under any applicable law, rule or regulation.

**8. Market flex:** If at any time before the date of close of general syndication, we notify you that, in our opinion, there has been, since [today’s date], a material increase in the pricing of corporate debt in the London syndicated lending market, we reserve the right to adjust the structure, terms and pricing of the Facilities in order to ensure a successful syndication. Our commitment to underwrite the Facilities under this letter and the Facility Documents is subject to appropriate amendments being made to the Facility Documents.

**9. Announcements:**  You and we each agree that no announcements regarding our respective roles as borrower, underwriter or arranger of the Facilities will be made without each other's prior written consent (such consent not to be unreasonably withheld or delayed) or except to the extent that any such announcement is required under any applicable law, rule or regulation.

**10. Warranty:** You warrant that all information or documentation supplied by you or on your behalf to us for the purposes of the Facilities is true and accurate in all material respects and not misleading.

**11. Period of Offer:** This offer shall remain in effect until the close of business, in London, on [date] at which time it will expire unless we receive your written acceptance of this letter. Following acceptance of this letter our obligations will terminate unless the Facility Documents are signed on or before [date]. Your obligations under paragraphs 4 (Indemnity), 5 (Expenses), 6 (Payments), 7 (Confidentiality) and 12 (Law) shall continue notwithstanding the termination of this letter.

**12. Law:** This letter will be governed by English law.

If you agree to the above please sign and return the attached copy to us.

Yours faithfully,

|  |  |  |
| --- | --- | --- |
| ……………………….  For and on behalf of  **EniBank plc**  We accept the terms set out above. | ……………………………  For and on behalf of  **[*underwriter*]**  We accept the terms set out above. | ………………………………  For and on behalf of  **[*underwriter*]**  We accept the terms set out above. |

………………………..

For and on behalf of

**Infinity Manufacturing Limited** [date]

**ENIBANK PLC**

[address]

To: INFINITY MANUFACTURING LiMITED

2 Albert Street

Birmingham B5 8HP

[date]

**Subject to contract**

Dear MS HARRIS,

**Term Sheet: £400,000,000 Term Loan Facility and £50,000,000 Revolving Credit Facility**

We are pleased to offer you financing on the following terms:

**Lenders:** A syndicate of financial institutions to be selected by the Arranger in consultation with the Borrower.

**Underwriters:** EniBank Plc and [insert names of other underwriters]].

**Arranger:** EniBank Plc.

**Agent:** EniBank Plc.

**Security Trustee:** EniBank Plc.

**Borrower:** Infinity Manufacturing Limited

**Guarantors:** Infinity Group plc; Infinity Jersey Limited; Infinity Technical Investments Limited, and following the Acquisition, T-Craft Motor Company Limited (the ‘Target’)(together the ‘Guarantors’).

**Facilities:** The facilities will be made available in two facilities. Facility A shall be a £400,000,000 term loan facility. Facility B shall be a £50,000,000 revolving credit facility. The facilities shall be underwritten in full by the Underwriters in the proportion of their commitment.

**Total Facilities Amount:** £450,000,000

**Purpose:** The Borrower shall apply the proceeds of Facility A towards the cost of acquisition by the Borrower of the entire issued share capital of T-Craft Motor Company Limited (the ‘Target’). Facility A will be classified as having green purposes in line with the Green Loan Principles published by the LMA, LSTA and APLMA in February 2021 (the ‘Green Loan Principles’).

The Borrower shall apply the proceeds of Facility B to finance costs and expenses in connection with the acquisition, and for general corporate purposes.

**Availability Period:** Facility A: until the date falling one month after execution of the Facilities Agreement.

Facility B: Utilisation Requests can be submitted up until one month before the Repayment Date.

**Utilisation:** Facility A: one Utilisation.

Facility B: each Utilisation in a minimum amount of £500,000.

**Repayment Date:** The facilities will be repaid in full on the fifth anniversary of the date of the Facilities Agreement.

**Voluntary**

**Prepayments:** Permitted on 30 days’ notice. Prepayment amounts to be no less than £5,000,000. Prepayments made under Facility A may not be redrawn.

**Interest Rate:** Facility A: the sum of: (a) SONIA and (b) a margin of 2.5%

Facility B: the sum of: (a) SONIA and (b) a margin of 2.65%

**Interest Periods:** One, two, three or six months at the option of the Borrower.

**Fees:** The following fees will be payable:

1. Arrangement fee as set out in the fee letter;
2. Agency fee as set out in the fee letter;
3. Security Trustee fee as set out in the fee letter; and
4. Commitment fee at 0.5% p.a. on daily undrawn amount (payable monthly) in arrears.

**Guarantees:** The facilities shall benefit from joint and several guarantees from each of the Guarantors.

**Security:** The Lenders will be granted:

(a) Charge by way of legal mortgage over the Target’s plant in Derby and charge over shares in the Target;

(b) Fixed and floating charges over all current and future assets of the Borrower way of a debenture (the ‘Debenture’);

(c) Fixed charge over the shares held by Infinity Group plc in its material subsidiaries;

(d) Fixed and floating charges over all current and future assets of Infinity Technical Investments Limited;

(e) Fixed and floating charges over all current and future assets of the Target;

(f) Fixed charges over intellectual property owned by Infinity Group plc; and

(g) The Lenders (at the Borrower’s cost) to be entitled to conduct annual security reviews and valuations.

**Conditions Precedent:** Standard conditions precedent for a transaction of this type, in a form and substance satisfactory to the Agent (acting reasonably), including but not limited to:

1. Board and shareholder resolutions (where required) of the Borrower and each of the Guarantors;
2. Formalities Certificate from Borrower and each of the Guarantors with constitutional documents of the Borrower and each of the Guarantors attached;
3. satisfactory evidence of the Borrower’s contribution of £100,000,000;
4. Legal opinion from the Lenders’ solicitors (in a form to be agreed by the Agent acting reasonably and to include confirmation that the loan and security documents are legal, valid, binding and enforceable and the security is effective);
5. Accountant’s report (in a form to be agreed between the parties) from the Lenders’ accountants confirming completion of and satisfaction with financial due diligence;
6. The Hedging Agreement, duly executed by the Borrower and the Hedging Counterparty;
7. Valuations and surveys for the plant in Derby;
8. Evidence of necessary planning, consents and permissions to operate the plant in Derby;
9. Confirmation of satisfactory insurance over the plant in Derby; and
10. Compliance with the Lenders’ KYC requirements**. FOR YOUR INFORMATION**: Banks in the UK are required by law to comply with anti-money laundering (AML) laws and Know your Customer (KYC) requirements to prevent criminals and terrorists from using financial products or services to store and move around their money. In the UK these requirements come mainly from the Terrorism Act 2000 (as amended), the Proceeds of Crime Act 2002, the Money Laundering Regulations Act 2007, the Money Laundering, Terrorist and Financing and Transfer of Funds Regulations 2017 and the Sanctions and the Anti-Money Laundering Act 2018 which apply across a range of sectors and institutions. KYC information that is gathered is also used to help banks adhere to the strict financial sanctions regimes that are in place across the globe.

**Representations and**

**Warranties:** Usual and customary for facilities of this type, including but not limited to:

1. Accurate valuation of Target and the plant in Derby;
2. Facility A to be used for an electric car production plant project which is in line with the Green Loan Principles;
3. Accuracy of annual reporting on environmental benefits.

**Undertakings:** Usual and customary for facilities of this type, including but not limited to:

1. Negative pledge (with exceptions to be agreed);
2. No material change of business;
3. Restrictions on disposals (with exceptions to be agreed);
4. Proceeds of Facility A to be credited to a dedicated loan account or otherwise tracked in accordance with the Green Loan Principles;
5. Annual reporting on environmental benefits resulting from use of Facility A;
6. Annual external reviewer to assess use of Facility A in line with the Green Loan Principles;
7. Maintenance and insurance of the plant in Derby; and
8. No payment of dividends by the Borrower.

**Financial** [Not relevant for teaching purposes]

**Covenants:**

**Events of Default:** Usual and customary for facilities of this type, including but not limited to:

(a) Cross default in respect of any material financial indebtedness of the Obligors (with exceptions to be agreed);

(b) Material adverse change;

(c) Substantial damage to the plant in Derby;

(d) Failure to apply Facility A in line with the Green Loan Principles; and

(d) Insolvency.

**Taxes:** All payments to be free of withholding and other taxes.

**Costs:** All reasonable expenses incurred in the preparation, negotiation, execution and delivery of the Facilities, including but not limited to reasonable legal fees, to be paid by the Borrower whether or not the Facilities are put in place.

**Majority Lenders:** 66⅔ % of the Total Commitments.

**Assignment:** Any Lender may transfer or assign all or part of the Facilities to another syndicate lender or an affiliate of a syndicate lender without the Borrower’s consent.

**Other:** All other standard terms for documents of this nature to be included.

**Acceptance:** These terms will be available for 30 days from the date of this Term Sheet. If the loan agreement in respect of the Facilities is not executed within three months of acceptance of this offer, the Arranger reserves the right to renegotiate the Term Sheet or withdraw the offer.

**Confidentiality**: This Term Sheet and its contents are intended for the exclusive use of the Borrower and shall not be disclosed by the Borrower to any person other than the Borrower’s legal and financial advisors for the purposes of the proposed transaction, unless the prior written consent of the Arranger is obtained.

**Law:** English law.

**Jurisdiction:** Courts of England.