



# FORGE GROUP LIMITED

ABN 58 065 464 226

## NOTICE OF GENERAL MEETING AND EXPLANATORY MEMORANDUM TO SHAREHOLDERS

**Date of Meeting**

6 April 2010

**Time of Meeting**

11am (Perth time)

**Place of Meeting**

Collins Room, Level 46 BankWest Tower, 108 St George's Terrace, Perth, Western Australia

**A Proxy Form is enclosed**

Please read this Notice and Explanatory Memorandum carefully.

If you are unable to attend the General Meeting please complete and return the enclosed Proxy Form in accordance with the specified directions.



**FORGE GROUP LIMITED**  
ABN 58 065 464 226

**NOTICE OF GENERAL  
MEETING**

Notice is hereby given that a General Meeting of Shareholders of Forge Group Limited ABN 58 065 464 226 will be held at 11am (Perth time) on 6 April 2010 at Collins Room, Level 46 BankWest Tower, 108 St George's Terrace, Perth, Western Australia for the purpose of transacting the following business referred to in this Notice of General Meeting.

**AGENDA**

*ITEMS OF BUSINESS*

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**1. Resolution 1 - Proposed Issue of 10,257,262 Shares**

To consider and, if thought fit to pass the following resolution as an **ordinary resolution**:

*"That, for all purposes, the Company approves the allotment and issue of 10,257,262 Shares at an issue price of \$1.90 per Share to Clough Operations Pty Ltd ABN 26 109 444 279 on the terms and conditions set out in the Explanatory Memorandum."*

**OTHER BUSINESS**

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To deal with any other business which may be brought forward in accordance with the Constitution and the Corporations Act.

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For the purposes of Resolution 1, the following definitions apply:

**Company** means Forge Group Limited ABN 58 065 464 226;

**Explanatory Memorandum** means the explanatory memorandum accompanying this Notice;

**Notice** means this Notice of General Meeting; and

**Shares** means fully paid ordinary shares in the capital of the Company.

By order of the Board

Michael Kenyon  
Company Secretary

Dated: 3 March 2010

# FORGE GROUP LIMITED

ABN 58 065 464 226

## EXPLANATORY MEMORANDUM

This Explanatory Memorandum is intended to provide shareholders with sufficient information to assess the merits of the Resolution contained in the accompanying Notice of General Meeting of Forge Group Limited ("**Forge**" or the "**Company**").

Certain abbreviations and other defined terms are used throughout this Explanatory Memorandum. Defined terms are generally identifiable by the use of an upper case first letter. Details of the definitions and abbreviations are set out in the Glossary to the Explanatory Memorandum.

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### RESOLUTION 1 - PROPOSED ISSUE OF 10,257,262 SHARES

Resolution 1 seeks Shareholder approval for the Company to issue 10,257,262 Shares to Clough Operations Pty Ltd ABN 26 109 444 279 (**Clough**) at an issue price of \$1.90 per Share (**Placement**).

#### 1. Overview of the Transaction

As announced on 23 February 2010, the Company and Clough have entered into a series of agreements in relation to a transaction which involves:

- the formation of a Strategic Alliance;
- Clough investing approximately \$19.5m in the Company via the Placement; and
- Clough making offers to Shareholders to acquire 50% of their Shares pursuant to the Proportional Takeover Bid at \$2.10 per Share<sup>1</sup>,

(**Transaction**).

The Transaction is consistent with the Company's strategy disclosed to the market in August 2009 and confirmed at the Company's Annual General Meeting in November 2009.

As a result of the scale of opportunities being presented to the Company and to enable it to continue on its strong growth trajectory, the Company has been seeking a major strategic partner to provide corporate and operational capability to support and accelerate its next phase of growth. While the Company is in a solid fundamental position, the Transaction significantly mitigates execution risk on its current and future projects and provides the Company with access to growth and operational benefits that the Company believes would not otherwise be available if it continued to operate in isolation.

The Placement forms an integral part of the Transaction. It specifically meets the Company's objectives to strengthen its balance sheet and improve working capital capacity to pursue larger scale projects and acquisition opportunities with Clough as its strategic partner. At the same time, the Company will maintain its independence and retain a multi-market focus.

The Directors and Major Shareholders support the Transaction and unanimously recommend that Shareholders vote in favour of Resolution 1 in the absence of a Superior Proposal. The reasons for the recommendation of the Directors are set out in section 9 of this Explanatory Memorandum.

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<sup>1</sup> Subject to Shareholder approval and completion of the Placement.

In essence, your Board and the Major Shareholders of Forge believe this Strategic Alliance has the capacity to move your Company to the next level, creating substantial opportunities for accelerating growth and shareholder value.

#### *The Placement*

The Placement involves the issue of 10,257,262 Shares to Clough at an issue price of \$1.90 per Share.

The Placement is a key component of the Transaction and partially facilitates triggering the operation of the Strategic Alliance. It involves Clough agreeing to invest approximately \$19.5 million in the Company subject to a number of conditions. One of the conditions is Shareholder approval of Resolution 1 in the Notice.

For the Placement to proceed, it requires an ordinary resolution to be passed by Shareholders of the Company. This is a simple majority of those Shareholders present and voting either in person or by proxy at the meeting, either on a show of hands or on a poll if one is called in accordance with applicable requirements.

The Major Shareholders holding 30.50% voting power and Directors holding 11.35% voting power (collectively 41.9% voting power) intend to vote in favour of the Placement in the absence of a Superior Proposal.

If the Placement is approved by Shareholders and completed, Clough will hold approximately 13.04% of the Company's issued Shares.

#### *The Proportional Takeover Bid*

If the Placement is approved by Shareholders and completed, Clough intends to make the Offer at \$2.10 per Share. If the Placement and Offer are successful, Clough's stake in the Company will range from 31.23% to 56.52% and involve the potential investment in the Company of between \$55-\$98 million.<sup>2</sup> The

minimum position of 31% will be achieved if the Directors (who hold Shares) and the Major Shareholders accept the Offer, which they intend to do in the absence of a Superior Proposal.

#### *The Strategic Alliance*

Clough becoming a cornerstone investor in the Company through the Placement and the Offer underpins the Strategic Alliance.

The Strategic Alliance will be triggered when the Clough Group acquires 31% of the issued Shares or Clough declares the Offer unconditional.<sup>3</sup>

The Strategic Alliance, and the significant investment to be made by Clough through the Placement and the Offer, will create a commercial alignment of interests that aims to generate substantial benefits for the Company in FY2011 and beyond, including a material, positive impact on earnings. It will also create a new source of project opportunities that may otherwise not be available to the Company that can be targeted to substantially increase earnings.

The Strategic Alliance will provide a framework for long-term strategic cooperation between the companies. It allows the parties to jointly target project opportunities in the liquefied natural gas (LNG), coal seam gas (CSG) and other oil and gas sectors and will support the Company's anticipated continued growth.

The Company believes the Strategic Alliance will allow both companies to leverage their complementary expertise and to capitalise on significant growth opportunities in the oil and gas, mining and civil infrastructure sectors. The key target markets for the Company and Clough will include Australasia and West Africa.

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<sup>2</sup> Subject to: (i) Shareholder approval of the Placement; (ii) the Offer being made and becoming unconditional; (iii) the level of acceptances under the Offer; and (iv) the acquisition of 3 million Options from the Relevant Directors.

<sup>3</sup> The Strategic Alliance is also triggered if the Placement is completed (but the Offer is not made due to a defeating condition or the Offer lapses without becoming unconditional) and Clough exercises the Call Options and as a result of that exercise and the Placement, the Clough Group holds 19.98% or more issued Shares.

The Strategic Alliance will provide for:

- (a) the Company having immediate access, on a commercial basis, to Clough's proven project management, resources and control systems to accelerate and support the Company's individual growth strategy;
- (b) transfer and secondment of key Clough personnel with proven experience to assist the Company in its next phase of growth;
- (c) identification of mutually advantageous partnering opportunities while the Company continues to act independently in the provision of services in the markets in which it operates;
- (d) the Company becoming Clough's "partner of choice" in construction activities that align with the Company's capability and capacity;
- (e) Clough assisting with developing and building on the Company's strategic plan with greater focus on LNG, CSG and other oil and gas markets;
- (f) standardisation and efficiency across the Company's operations;
- (g) adoption of Clough's contracting and risk management processes and principles which are suitable for the Company's requirements;
- (h) Clough assisting the Company to identify and assess future acquisition opportunities which complement the Company's strategic growth plan; and
- (i) the appointment by Clough of a non-executive Director to the Board of Forge upon the Clough Group acquiring 13% of the issued Shares, and an independent non-executive chairman upon the Clough Group acquiring 31% of the issued Shares.

The Company will continue to operate as a separate business and will operate in the marketplace independently from Clough.

*Agreements to acquire securities from the Major Shareholders and the Relevant Directors*

Clough has entered into various agreements and deeds with the Major Shareholders and Relevant Directors (or entities controlled by them) to acquire Shares and Options in connection with the Transaction. These documents are described in section 2 of this Explanatory Memorandum.

## **2. Transaction Agreements**

On 23 February 2010, Forge, Clough and Clough Limited ABN 59 008 678 813 entered into a series of agreements in relation to the Transaction.

The Placement and Bid Implementation Agreement (**PBIA**) provides for the Company to issue 10,257,262 Shares to Clough at an issue price of \$1.90 per Share via the Placement. The PBIA contains other terms and conditions in relation to the Offer, but specifically provides that the Placement is conditional on Shareholder approval at the Meeting. A summary of the key terms of the PBIA is set out in Appendix A of this Explanatory Memorandum. The associated Offer Conditions are set out in Appendix B of this Explanatory Memorandum.

The Strategic Alliance Agreement governs the future relationship between the Company and Clough. A summary of the key terms of the Strategic Alliance Agreement is set out in Appendix C of this Explanatory Memorandum.

Clough entered into Call Option Agreements with the Major Shareholders under which the Major Shareholders granted Clough Call Options over 13,676,349 Shares. If Clough exercises all of these Call Options, it will hold approximately 19.99% of the voting power in the Company. Following Shareholder approval and completion of the Placement, the maximum voting power under the Call Options, if exercised, will automatically reduce to approximately 6.95%. A summary of the key terms of the Call Option Agreements is set out in Appendix D of this Explanatory Memorandum.

Clough has also entered into OADs to acquire 3,000,000 Options from the Relevant Directors (or entities controlled by them). The price payable for the Options is the Offer price (as that price may be varied under the Corporations Act) minus the exercise price of \$0.35 per Option. The acquisition of the Options is subject to the Offer being declared unconditional by Clough and the Offer closing.<sup>4</sup> These Options do not provide Clough with any voting rights or relevant interests in the Company<sup>5</sup>. A summary of the key terms of the OADs is set out Appendix E of this Explanatory Memorandum.

Clough will make offers to all Forge optionholders (other than the Relevant Directors) to acquire 50% of their Options on the same terms as the OADs.

### **3. General Overview of Clough and Forge**

#### *Clough*

Clough is a subsidiary of Clough Limited. Established in 1919, Clough Limited is an engineering-led Engineering, Procurement and Construction (EPC) contractor servicing both onshore and offshore oil and gas projects in Australia, South East Asia and the USA. A key differentiator of this contracting model is that it provides clients with a seamless interface from engineering through construction and into completion.

With a market capitalisation in excess of \$600 million, and a current orderbook of \$1.3 billion, Clough Limited's client list includes major oil and gas companies Exxon Mobil, Chevron, BHP, Woodside and Conoco Phillips. Backed by an experienced management team, over 2,000 personnel around the world and sophisticated project management systems, Clough Limited is recognised for its commitment to safety, sustainable development and the wellbeing of the people, communities and environments in which it operates.

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<sup>4</sup> The Relevant Directors may terminate the OAD in circumstances where a Superior Proposal is made and Clough does not make a counterproposal, or makes a less favourable counterproposal.

<sup>5</sup> No voting rights or relevant interest would be created unless Clough has acquired the Options after completion of the Offer and has subsequently exercised those Options to acquire the underlying Shares.

Clough Limited's engineering and construction services are delivered to three market sectors:

*Gas Projects* – servicing regional domestic gas, LNG and coal seam gas markets with conceptual and front end engineering design, EPCM or EPC project delivery, modularisation and fabrication, and the construction of marine and LNG project infrastructure.

*Marine Construction* – provides offshore solutions to both the Australasian platform and pipeline and the growing deepwater subsea markets. Services encompass concept and FEED studies, design, fabrication, installation, intervention, inspection repair and maintenance and light construction.

*Asset Support* - provides a complete suite of OPEX services to the Australasian market including brownfield engineering, operations and maintenance, shutdowns and campaign management, commissioning and decommissioning.

For more about the Clough Group visit:  
[www.clough.com.au](http://www.clough.com.au).

#### *Forge*

Forge is a WA based public company. Its core business is engineering, procurement, construction and maintenance, particularly for the resource and oil and gas sectors. Listed on the ASX in 2007, the Company has established operations in WA and West Africa, employs more than 550 staff and has a suite of blue chip clients including Woodside, BHP Billiton, Rio Tinto, Chevron, Newmont and Goldfields. Forge provides a "whole of life" asset management service to clients, through three wholly owned subsidiaries:

*Cimeco Pty Ltd*: provides a complete suite of construction services to the resources industry including civil and concrete, mechanical, electrical, and instrumentation and maintenance services.

*Abesque Engineering Ltd*: specialist provider of engineering design, procurement, construction and project management services to the resource and oil and gas sectors.

*Webb Construction (West Africa) Ltd:* based in Ghana, Webb has been in West Africa for more than 15 years, and provides comprehensive mine and project construction services to the resource sector.

#### **4. Advantages and Disadvantages of the Placement**

The Board believes that, on balance, the likely advantages to the Company if the Placement becomes effective, as part of the basis for the Transaction, outweigh the potential disadvantages. On that basis, the Board is of the view that the Placement is in the best interests of Shareholders in the absence of a Superior Proposal. The Board notes that there is no other proposal for Shareholders to consider at the date of this Notice.

The key advantages and disadvantages of the Placement, in isolation, and as part of the Transaction are summarised below.

##### *Advantages*

- (a) The Placement will increase cash reserves by approximately \$19.5 million and it will significantly strengthen the balance sheet of the Company by providing further security for the provision of bank guarantees for larger scale projects which are expected to be derived from the strategic partnership with Clough.
- (b) Following the Placement, the Company will be well funded with cash and cash equivalents of approximately \$58 million, and net cash of \$34 million<sup>6</sup>.

This provides appropriate and adequate funding to enable the Company to grow organically, but in addition to capitalise on opportunities for acquisitive growth over the next 12 to 18 months. The Company sees opportunity in the current market to acquire existing businesses servicing the oil and gas and mining sectors that would complement the business of Forge and be value accretive. The Strategic Alliance with

Clough contemplates the parties working together to identify and assess suitable acquisitions for the Company.

- (c) As indicated to the market at its Annual General Meeting in November 2009, the Company is aiming to increase its annual revenue target from \$250 million to \$500 million by 2013. The Company believes this revenue target is realistic and achievable given the reduced execution risk and overall benefits and opportunities that will be derived from its strategic partnership with Clough. This revenue target, however, equates to incremental revenue of more than \$250 million from FY10 levels and will necessitate significant bank guarantee requirements for the Company. The Company will also need greater provision for working capital fluctuations as it targets larger scale projects. These requirements will be supported by the Company's strengthened balance sheet which will have cash and cash equivalents of approximately \$58 million after the Placement or net cash of \$34 million<sup>7</sup>.
- (d) The Placement also triggers the appointment of a Clough nominated non-executive director to the Board of the Company upon Clough acquiring more than 13% in the Company. Clough has indicated its nominee will be Mr John Smith, the CEO of Clough Limited. Mr Smith's credentials are detailed in section 8 of this Explanatory Memorandum and his appointment will greatly enhance the experience and capability of the Forge Board, particularly in the oil and gas markets and increase the Company's ability to attract an experienced independent chairman.
- (e) The Placement is the first step in facilitating the Transaction and in securing the benefits of the Strategic Alliance with Clough. The Board believes these benefits are significant and include:

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<sup>6</sup> Calculated as at 31 December 2009 and comprises of cash and cash equivalents less payments received in advance from clients.

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<sup>7</sup> Refer to note 6.

- (i) the Strategic Alliance will significantly mitigate execution risk for Forge on its current and future projects by providing the Company with access to Clough's proven project management, resources and control systems on a commercial basis. This includes providing access to proven contracting and risk management policies;
- (ii) the Company will become Clough's "partner of choice" for all construction related activity, importantly creating a new source of project opportunities for the Company in its tender pipeline;
- (iii) the Company's profile will be raised in the markets in which it operates. The alliance with Clough enables Clough to promote Forge's EPC construction capability to provide a credible alternative in the oil and gas, LNG, CSG and domestic gas markets;
- (iv) Clough will assist with identifying and assessing potential acquisition opportunities to accelerate the Company's growth in the next 12 to 18 months;
- (v) it facilitates mutual partnering opportunities, but also permits both companies to continue to operate independently;
- (vi) Clough will assist the Company with strategic planning with greater focus on oil and gas and CSG markets;
- (vii) the Strategic Alliance provides a framework for future strategic co-operation between the companies. Importantly, Clough has the operational strength and management expertise with large scale projects to assist in growing the Company's business from current levels; and
- (viii) it is anticipated that a senior Clough executive will join the Company's executive management team.
- Disadvantages*
- (a) To facilitate the Transaction, the Directors have recommended that Shareholders vote in favour of Resolution 1 in the absence of a Superior Proposal. If the Placement is approved and completed, it is possible that another takeover offer or other change in control transaction is less likely to occur than if the Placement does not proceed.
- (b) The Placement will dilute the shareholding of current Shareholders. See section 6 of this Explanatory Memorandum for information about the effect of the Placement on the Company's capital structure.
- (c) The price of the Placement is \$1.90 per Share which represents a 10.38% discount to the VWAP of the Shares on ASX for the 1 month period prior to the Announcement Date, and a 17.75% discount to the last traded price of the Company's Shares on ASX prior to the Announcement Date, being \$2.31 per Share. The price of the Placement results in total dilution of the Share price of 2.31% based on the last traded price of the Company's Shares on ASX prior to the Announcement Date.<sup>8</sup>
- (d) The Placement is a significant
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- <sup>8</sup> Post the Placement, the diluted price of the Shares should equate to \$2.26 per Share, which represents 2.31% dilution from the last traded price prior to the Announcement Date of \$2.31 per Share.
- The diluted share price of \$2.26 is calculated as follows:
- $$(A+B) \div C$$
- Where:
- A = (Number of Shares Before Placement × Last Traded Price of \$2.31)
- B = (Number of New Placement Shares × Placement Price of \$1.90)
- C = (Number of Issued Shares After Placement)

component of the Transaction which if approved will result in Clough acquiring 13.04% of the Company. Upon making the Offer, Clough could end up with greater than 50% of the issued Shares or shareholder control of the Company. Under the Offer, Clough could therefore acquire shareholder control in the Company without paying a premium to the market price at the Announcement Date. Shareholders may also be foregoing any future control premium in any shares they continue to hold in the Company.

#### 5. Profile of the Company after the Placement

If the Placement is approved and completed, the Company will issue 10,257,262 new Shares to Clough in consideration for \$19.5 million.

After the Placement, the Company will have:

- (a) an undiluted market capitalisation of approximately \$179.41 million, based on a closing price of \$2.28<sup>9</sup>, increased liquidity and an enhanced market presence;
- (b) cash and cash equivalents of \$58 million and net cash of \$34 million<sup>10</sup>; and
- (c) stronger financial and managerial capabilities with the appointment of Clough's CEO to the Board of the Company.<sup>11</sup>

<sup>9</sup> The closing price of the Shares as at 2 March 2010.

<sup>10</sup> Refer to note 6.

<sup>11</sup> The appointment will not be effective until after completion of the Offer.

#### 6. Effect of the Placement on the Company's capital structure and balance sheet

The effect of the Placement on the capital structure of the Company is as follows:

Shares	
Shares currently on issue	68,431,752
Shares issued as part of the Placement	10,257,262
<b>Total Shares</b>	<b>78,689,014</b>

Options	
Options currently on issue	7,480,000
<b>Total Options</b>	<b>7,480,000</b>

The effect of the Placement on the Balance Sheet of the Company if the Placement had been made immediately following the half yearly accounts (as presented in the Company's Appendix 4D released to the ASX on the 23 February 2010) is shown in the Pro Forma Balance Sheet as follows:

	31 December 2009	Placement to Clough	Pro Forma after Placement
	\$		
<b>Balance Sheet</b>			
<b>As At 31 December 2009</b>			
<b>Current Assets</b>			
Cash and cash equivalents	39,311,714	19,488,798	58,800,512
Trade and other receivables	9,758,170		9,758,170
Inventories	9,984,310		9,984,310
Current tax assets	205,337		205,337
Other assets	1,729,389		1,729,389
<b>Total Current Assets</b>	<b>60,988,920</b>	<b>19,488,798</b>	<b>80,477,718</b>
<b>Non-Current Assets</b>			
Receivables	-		-
Other Financial Assets	-		-
Investment in associates	-		-
Property, Plant and Equipment	28,703,266		28,703,266
Deferred Tax Assets	913,455		913,455
Intangibles	15,634,911		15,634,911
Other Assets	-		-
<b>Total Non-Current Assets</b>	<b>45,251,632</b>		<b>45,251,632</b>
<b>Total Assets</b>	<b>106,240,552</b>	<b>19,488,798</b>	<b>125,729,350</b>
<b>Current Liabilities</b>			
Trade and other payables	34,906,338		34,906,338
Interest Bearing Liabilities	2,799,362		2,799,362
Current Tax Liabilities	2,848,955		2,848,955
Provisions	436,496		436,496
<b>Total Current Liabilities</b>	<b>40,991,151</b>		<b>40,991,151</b>
<b>Non-Current Liabilities</b>			
Payables	-		-
Interest Bearing Liabilities	4,032,537		4,032,537
Deferred Tax Liabilities	82,654		82,654
Provisions	162,696		162,696
<b>Total Non-Current Liabilities</b>	<b>4,277,887</b>		<b>4,277,887</b>
<b>Total Liabilities</b>	<b>45,269,038</b>		<b>45,269,038</b>
<b>Net Assets</b>	<b>60,971,514</b>	<b>19,488,798</b>	<b>80,460,312</b>
<b>Equity</b>			
Contributed Equity	23,953,953	19,488,798	43,442,751
Reserves	784,585		784,585
Retained Earnings	36,232,976		36,232,976
<b>Total Equity</b>	<b>60,971,514</b>	<b>19,488,798</b>	<b>80,460,312</b>

## **7. Clough's relevant interest in the Company**

If the Placement is completed, Clough will acquire 10,257,262 Shares with approximately 13.04% voting power in the Company.

At the date of this Notice, Clough holds Call Options with the Major Shareholders in respect of 13,676,349 Shares, which give Clough a relevant interest in 19.99% of the issued voting Shares. If the Placement is completed, the Call Options will automatically reduce to 5,470,539 Shares in the Company representing 6.95% of the issued voting Shares. Accordingly, following completion of the Placement, Clough's relevant interest in the issued voting Shares will remain the same at 19.99%.

Clough also has the right to acquire 3,000,000 Options from Relevant Directors pursuant to the OADs, subject to the Offer being made and declared unconditional by Clough.<sup>12</sup> These Options do not provide Clough with any voting rights or relevant interests in the issued voting Shares.<sup>13</sup>

If all of the Shareholders accept the Offer in full, such that there is a 100% acceptance level, then Clough's relevant interest in the issued voting Shares would end up at a maximum of 56.52% in the Company.

## **8. The identity, associations and qualifications of proposed Directors**

The Company's management team is being retained and enlarged. Peter Hutchinson, who is a Director and the Managing Director of Forge, will remain as the Managing Director, as will Marcello Cardaci, as independent Director. Andrew Ellison and Gregory McRostie, whilst resigning from the Board will retain senior management positions as Managing Director of Cimco Pty Ltd and Abesque Engineering Ltd, respectively.

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<sup>12</sup> The Relevant Directors may terminate the OAD in circumstances where a Superior Proposal is made and Clough does not make a counterproposal, or makes a less favourable counterproposal.

<sup>13</sup> No voting rights or relevant interest will be created unless Clough has acquired the Options after completion of the Offer and has subsequently exercised those Options to acquire the underlying Shares.

Under the terms of the PBIA, if Clough acquires an ownership level of 13% in the Company, it will have the right to nominate a person as non-executive Director. Upon completion of the Placement, Clough intends to nominate John Smith as the non-executive Director. The appointment will take effect following completion of the Offer.

Mr Smith was appointed CEO of Clough on 1 August 2007. He is a chartered mechanical engineer with a degree from Glasgow University and has almost 30 years of international oil and gas experience from bases in Norway, the United Kingdom and Australia. He worked for 20 years for various Brown and Root companies in upstream oil and gas engineering and construction. Following the Halliburton Dresser merger in 1998 Mr Smith took operational responsibility for Halliburton Subsea and managed the strategic process which led to the formation of Subsea 7. He was CEO of that business for the first two years and served on the board until June 2007. He also served on the boards of five other listed companies as well as running his own business.

If the Clough Group acquires an ownership level of 31% in the Company, it will have the right to nominate an independent non-executive chairman to the Board.

## **9. Recommendation of Directors**

Based on the information available, including that contained in this Explanatory Memorandum, the Directors unanimously recommend that Shareholders vote in favour of the Placement in the absence of a Superior Proposal.

If the Placement and the Transaction are completed, the Company will have a significantly strengthened balance sheet and improved working capital to pursue larger scale projects and acquisition opportunities. Further, the Strategic Alliance will bring together resources, processes, systems and business opportunities. The Company will be able to grow and expand its current business.

The Board considers that the Placement is consistent with and delivers on its publicly stated strategy for the Company and the

Strategic Alliance will provide significant benefits to the Company that may otherwise be unavailable.

The Directors unanimously approved the proposal to put Resolution 1 to Shareholders and unanimously recommend that Shareholders vote in favour of Resolution 1 in the absence of a Superior Proposal. The Directors will vote in favour of Resolution 1 in the absence of a Superior Proposal.

Messrs Hutchinson and Ellison have a material personal interest in the Transaction. This interest arises with respect to the acquisition of their Options under the OADs, which will take place if the Offer becomes unconditional and closes. As stated in section 2 of this Explanatory Memorandum, Clough will make offers to all Forge optionholders (other than Messrs Hutchinson and Ellison) to acquire 50% of their Options on the same terms as the OADs.

Messrs Hutchinson and Ellison voted in favour of the proposal to put Resolution 1 to Shareholders and recommend that Shareholders vote in favour of Resolution 1 in the absence of a Superior Proposal because despite their material personal interest, their interests are otherwise aligned with the interests of all Shareholders in relation to the Transaction and they believe the Transaction is in the best interests of Shareholders.

#### **10. What happens if Shareholders do not approve the Placement?**

If the Placement does not proceed, the Company will not receive approximately \$19.5 million of cash proceeds for issuing Shares to Clough. As a result, the Company's forecast cash position at the end of February 2010 would be approximately \$34 million comprising of cash and cash equivalents of \$58 million less payments received in advance from clients of \$24 million as at 31 December 2009. This level of cash will result in slower growth and development and will restrict new acquisition opportunities available to the Company.

The Strategic Alliance will not become effective unless:

- (a) the Clough Group acquire a minimum shareholding of 31% in the Company; or
- (b) Clough declares the Offer unconditional; or
- (c) the Placement is completed and Clough exercises the Call Options and as a result of that exercise and the Placement, the Clough Group holds 19.98% or more issued Shares, if Clough does not make the Offer due to a defeating condition or the Offer lapses without becoming unconditional.

The issue of Shares in the Placement will be the first step in facilitating Clough in obtaining the minimum shareholding required to trigger the Strategic Alliance.

If the Placement and the Transaction are not completed, the Company's ability to grow and develop will be restricted by the Company's:

- (a) ability to provide further security to its bank in order to increase the Company's bank guarantee facility;
- (b) ability to complete acquisitions which are outside its financial capacity;
- (c) ability to sustain adequate provisions of working capital as the value of contracts increase;
- (d) ability to access resources, systems and processes required to undertake large scale resource projects;
- (e) lack of experience and resources required to enter the coal seam gas engineering and construction markets and to undertake the larger more complex LNG and other oil and gas opportunities; and
- (f) potential risks associated with managing the current level of growth in the absence of a strategic partner.

The Company may also need to re-engage its search for a strategic partner and if it does it may be on terms which are less favourable than those under the Strategic Alliance Agreement and the Transaction.

## GLOSSARY

**Announcement Date** means 23 February 2010, the date on which the Placement was announced.

**Board** means the board of Directors of the Company.

**Call Option** means a call option to acquire Shares in the Company pursuant to the Call Option Agreements.

**Call Option Agreement** means a Call Option Agreement between Clough and a Major Shareholder.

**Clough** means Clough Operations Pty Ltd ABN 26 109 444 279.

**Clough Group** means Clough Limited and its subsidiaries, including Clough.

**Clough Limited** means Clough Limited ABN 59 008 678 813.

**Company** or **Forge** means Forge Group Limited ABN 58 065 464 226.

**Constitution** means the constitution of the Company.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means a director of the Company.

**Major Shareholders** mean Temorex Pty Ltd ACN 061 621 896, Chisholm Nominees (WA) Pty Ltd ACN 009 318 110, Allise Pty Ltd ABN 44 009 282 115 and Barry McRostie.

**Meeting** means the general meeting the subject of the Notice.

**Notice** means the means the Notice of General Meeting accompanying this Explanatory Memorandum.

**OAD** means an Option Acquisition Deed between the Relevant Directors (or entities controlled by them) and Clough dated 23 February 2010.

**Offer** each offer to acquire Forge Shares to be made by Clough to each Forge Shareholder under the Proportional Takeover Bid on terms consistent with the PBIA.

**Offer Conditions** means the conditions in the PBIA set out in Appendix B.

**Option** means an option to acquire Shares.

**PBIA** means the Placement and Bid Implementation Agreement between the Company, Clough and CLO dated 23 February 2010.

**Placement** means the issue of 10,257,262 Shares to Clough at \$1.90 per Share pursuant to the PBIA.

**Proportional Takeover Bid** means an off-market takeover bid for 50% of each Forge Shareholder's Forge Shares to be implemented in accordance with Chapter 6 of the Corporations Act.

**Relevant Directors** means Peter Hutchinson and Andrew Ellison.

**Resolution** means a resolution proposed pursuant to the Notice.

**Share** means a fully paid ordinary share in the capital of the Company.

**Shareholder** means a holder of Shares in the Company.

**Strategic Alliance** means the alliance between Forge and Clough pursuant to the Strategic Alliance Agreement.

**Strategic Alliance Agreement** means the Strategic Alliance Agreement between Forge, Clough and CLO dated 23 February 2010.

**Superior Proposal** is defined in Appendix F.

**VWAP** means volume weighted average price.

## **APPENDIX A – PLACEMENT AND BID IMPLEMENTATION AGREEMENT**

### **1. Subscription**

- (a) Clough has agreed to subscribe for 10,257,262 Forge Shares at \$1.90 per share.
- (b) Completion of the Subscription is subject to:
  - (i) the Forge Shareholders approving the Subscription at a general meeting; and
  - (ii) none of the Conditions (except the Condition in respect of minimum acceptance of the Offer) being triggered on or before the Subscription Completion Date.
- (c) Clough acknowledges and agrees that the Subscription Shares will not have any rights to receive the 2010 financial year interim fully franked dividend per Forge Share declared by Forge on or about the Execution Date.

### **2. Proportional Takeover Bid**

- (a) Clough has agreed to make an off-market proportional takeover offer to all Forge Shareholders to acquire 50% of each Forge Shareholder's Forge Shares at \$2.10 per share, to be implemented in accordance with the Corporations Act.
- (b) Conditions precedent to Clough making the Offer are:
  - (i) Subscription Completion occurring; and
  - (ii) none of the Conditions (except the Condition in respect of minimum acceptance of the Offer) being triggered on or before the Offer Date.

Clough may waive these conditions precedent in its absolute discretion.

- (c) The Offer will be subject to various conditions, including a minimum acceptance condition that at or before the end of the Offer Period, Clough has a relevant interest in more than 31% (by number) of the Forge Shares on issue at that time.

The conditions to the Offer are set out in full in Appendix B.

- (d) Prior to entering into the Implementation Agreement, Forge was advised by each of its directors that they intend to recommend acceptance of the Offer to Forge Shareholders subject to:

- (i) there being no Superior Proposal; and
- (ii) the independent expert commissioned by the Forge Board giving an opinion that the Proportional Takeover Bid is reasonable,

in the terms of the public announcement concerning the Proportional Takeover Bid accompanying this Appendix.

### **3. Exclusivity arrangements**

- (a) No shop

From the Execution Date to the day which is the end of the Offer Period, Forge must not, and must not authorise, permit or require any of its associates, agents or advisers to:

- (i) directly or indirectly solicit, invite, facilitate, encourage or initiate any enquiries, negotiations, discussions or proposal in relation to, or which might reasonably be expected to lead to, a Competing Proposal; or
- (ii) communicate to any person any intention to do any of these things.

(b) No talk

From the Execution Date to the Offer Date, Forge must not, and must not authorise, permit or require any of its associates, agents or advisers to:

- (i) directly or indirectly participate in any discussions or negotiations;
- (ii) enter into any agreement, arrangement or understanding; or
- (iii) communicate any intention to do any of these things,

with another person in relation to, or which might reasonably be expected to lead to, a Competing Proposal.

(c) Notice of Competing Proposal

Amongst other things and subject to certain exceptions, Forge must give Clough notice immediately upon becoming aware of any:

- (i) negotiations or discussions;
- (ii) approach or attempt to initiate any negotiations or discussions;
- (iii) intention to make such an approach or attempt to initiate any negotiations or discussions; or
- (iv) any request for information relating to Forge or the Business or any request for access to Forge's books and records, which Forge reasonably believes is made,

in respect of any expression of interest, offer or proposal that may lead to any Competing Proposal.

(d) Superior Proposal and fiduciary duties

Nothing referred to in paragraph (b) above prevents Forge, the Forge Board or any associates of Forge from doing

or not doing anything with respect to a Competing Proposal in relation to any person, if:

- (i) the Forge Board has determined (in good faith and acting reasonably), after receiving written legal advice from its external legal counsel that to do so, or not to do so, as the case may be, would constitute or would be likely to constitute a breach of any fiduciary or statutory duty of the members of the Forge Board; and
- (ii) the Competing Proposal is or can reasonably be considered to become a Superior Proposal,

provided that the Competing Proposal has not arisen as a consequence of a breach of the circumstances referred to in paragraphs (a) and (b) above.

(e) Matching right

If, at any time prior to completion of the Offer, Forge receives a proposal in relation to a Superior Proposal, the following provisions apply:

- (i) Forge must immediately give Clough notice in writing of that fact and that notice must provide all material details of the Superior Proposal, including details of the proposed acquirer; and
- (ii) if Forge gives Clough a notice in accordance with paragraph (e)(i) above:
  - (A) Forge agrees that it will not, until the end of the third Business Day following the receipt of that notice by Clough, enter into any legally binding agreement with respect to the Superior Proposal;

- (B) Clough agrees that such notice and its contents are to be kept confidential;
- (C) Clough will have the right, but not the obligation, at any time until the end of the third Business Day following receipt of such notice to make a Counterproposal and, if Clough does so, the Forge Board must review the Counterproposal in good faith and in what the Forge Board considers is required to comply with its fiduciary and statutory duties, to determine whether the Counterproposal is more favourable to Forge Shareholders than the Superior Proposal and, if so, the parties must take steps to implement the Counterproposal.

Proportional Takeover Bid or the Transaction, or any member of the Forge Board withdraws a recommendation previously made;

- (iii) the resolution to approve the issue of the Subscription Shares is not passed at the relevant general meeting; or
- (iv) if the rights and obligations of the parties terminate under the terms of the agreement (other than by reason of the non-fulfilment of a Condition set out in any of paragraphs 1, 3, 4, 8, 9, 10, 11, or 12 of Appendix B) or Clough validly terminates the Implementation Agreement (other than by reason of the non-fulfilment of a Condition set out in any of paragraphs 1, 3, 4, 8, 9, 10, 11, or 12 of Appendix B).

#### 4. Reimbursement of costs

##### (a) Payment by Forge to Clough

Provided that Clough has not failed to perform any material covenant required to be performed by Clough (and such failure remains unremedied) and no Clough representation and warranty is untrue in any material respect, Forge must reimburse Clough for the costs it has incurred by paying Clough \$700,000 if:

- (i) a Competing Proposal is made:
  - (A) the maker of the Competing Proposal (together with its associates) acquires a relevant interest in more than 15% of the Forge Shares; and
  - (B) the Competing Proposal becomes unconditional;
- (ii) the Forge Board fails to recommend unanimously the Proportional Takeover Bid or makes a public statement that it no longer supports the

##### (b) Exceptions to payment under paragraph 4(a).

Forge is not obliged to make the payment referred to in paragraph 4(a) if:

- (i) Subscription Completion occurs and the Offer becomes unconditional;
- (ii) Clough (or its nominee) becomes the registered holder and beneficial owner of 19.99% or more of the issued ordinary share capital of Forge under the Transaction, by reason of the exercise by Clough of its rights under any one or more of the Call Option Over Shares Agreements, or because Subscription Completion occurs and the Clough exercises its rights under any one or more of the Call Option Over Shares Agreement;

- (iii) the independent expert commissioned by the Forge Board gives an opinion that the Proportional Takeover Bid is not fair and not reasonable; or
  - (iv) Forge validly terminates the Implementation Agreement due to a material breach by Clough that remains unremedied for the period specified in the Implementation Agreement.
- (c) Reduction to payment under paragraph 4(a).

If:

- (i) Subscription Completion does not occur; and
- (ii) Clough exercises its rights under the Call Option Over Shares Agreements to purchase some (but not all) of the Forge Shares the subject of the Call Option Over Shares Agreements and Clough (and/or its nominee) becomes the registered holder and beneficial owner of those Forge Shares under the relevant Call Option Over Shares Agreements,

the amount payable referred to in paragraph 4(a) will be reduced by a proportion which is equal to the proportion of the Forge Shares purchased by Clough (and/or its nominee) under the circumstances set out in sub-paragraph (c)(ii) above bears to the total number of Forge Shares the subject of the relevant Call Option Over Shares Agreements.

- (d) Payment by Clough to Forge

Provided that Forge has not failed to perform any material covenant required to be performed by Forge and such failure remains unremedied and no Forge representation and warranty is untrue in any material respect, if

Forge validly terminates the Implementation Agreement due to a material breach by Clough that remains unremedied for the period specified in the Implementation Agreement, Clough must reimburse Forge for the costs it has incurred by paying Forge \$700,000.

- (e) Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel, a Court or any other Governmental Agency that all or any part of the amount payable in accordance with paragraph 4(a) or paragraph 4(c) ("**Impugned Amount**"):

- (i) is unlawful;
- (ii) involves a breach of the duties of the Forge Board or the board of directors of Clough (as the case may be); or
- (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then:

- (iv) Forge's or Clough's obligation (as the case may be) to pay the amount referred to in paragraph 4(a) or paragraph 4(c) respectively does not apply to the extent of the Impugned Amount; and
- (v) if Clough or Forge has received an Impugned Amount, it must refund it to the other within ten Business Days of the final determination being made.

**Definitions for this Appendix A are set out in Appendix F.**

## **APPENDIX B - OFFER CONDITIONS**

### **1. Minimum acceptance condition**

At or before the end of the Offer Period, Clough has a relevant interest in more than 31% (by number) of the Forge Shares on issue at that time.

### **2. No prescribed occurrences**

None of the following events happen during the Condition Period:

- (a) Forge or a subsidiary of Forge converting all or any of its shares into a larger or smaller number of shares;
- (b) Forge or a subsidiary of Forge resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) Forge or a subsidiary of Forge:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Forge or a subsidiary of Forge issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than pursuant to the exercise of a Forge Option in accordance with its terms (save for the exercise of a Forge Option the subject of an Option Acquisition Deed) or the issue of Forge Shares to Clough pursuant to the Implementation Agreement;
- (e) Forge or a subsidiary of Forge issuing or agreeing to issue, securities or other instruments convertible into shares or debt securities;
- (f) Forge or a subsidiary of Forge disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;

- (g) Forge or a subsidiary of Forge charges, or agrees to charge, the whole, or a substantial part, of its business or property;
- (h) Forge or a subsidiary of Forge resolves to be wound up;
- (i) a liquidator or provisional liquidator of Forge or a subsidiary of Forge is appointed;
- (j) a court makes an order for the winding up of Forge or a subsidiary of Forge;
- (k) an administrator of Forge, or a subsidiary of Forge, is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) Forge, or a subsidiary of Forge, 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 Forge or a subsidiary of Forge.

### **3. No action by Governmental Agency adversely affecting the Proportional Takeover Bid**

During the Condition Period:

- (a) there is not in effect any preliminary or final decision, order or decree issued by a Governmental Agency;
- (b) no action or investigation is instituted, or threatened by any Governmental Agency with respect to Forge or any subsidiary of Forge; or
- (c) no application is made to any Governmental Agency (other than an application by Clough or any company within the Clough Group, an application under section 657G of the Corporations Act or an application commenced by a person specified in section 659B(1) of the Corporations Act in relation to the Proportional Takeover Bid),

in consequence of, or in conjunction with, the Proportional Takeover Bid, which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or may otherwise materially adversely impact upon, the making of the Proportional Takeover Bid or the completion of any transaction contemplated by the Proportional Takeover Bid or seeks to require the divestiture by Clough of any Forge Shares, or the divestiture of any assets by Forge or by any subsidiary of Forge or by any company within the Clough Group.

#### **4. Approvals by Governmental Agency**

During the Condition Period Clough receives all Approvals which are required by law or by any Governmental Agency:

- (a) to permit the Offer to be made to and accepted by Forge Shareholders in all applicable jurisdictions;
- (b) as a result of the Offer or the successful acquisition of the Forge Shares; and
- (c) which are necessary for the continued operation of the Business or of Forge and its subsidiaries,

and those Approvals are on an unconditional basis and remain in force in all respects and there is no notice or indication of intention to revoke, suspend, restrict, modify or not renew those Approvals.

#### **5. No material acquisitions, disposals, etc.**

Except for any proposed transaction publicly announced by Forge before the Announcement Date, none of the following events occur during the Condition Period without the prior written consent of Clough:

- (a) Forge, or any subsidiary of Forge, acquires, offers to acquire or agrees to acquire (including by option agreement) one or more companies, businesses or assets (or an interest in one or more companies, businesses or assets) for an amount in aggregate

greater than \$5,000,000, other than for matters in the nature of Construction Capex or an Operational Commitment (regardless of whether it involves expenditure in excess of \$1,000,000 in the case of Construction Capex or \$350,000 in the case of an Operational Commitment), or makes an announcement about such an acquisition;

- (b) Forge, or any subsidiary of Forge, disposes, offers to dispose or agrees to dispose, of one or more companies, businesses or assets (or an interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$5,000,000, other than for matters in the nature of Construction Capex or an Operational Commitment (regardless of whether it involves expenditure in excess of \$1,000,000 in the case of Construction Capex or \$350,000 in the case of an Operational Commitment), or makes an announcement about such a disposal;
- (c) Forge, or any subsidiary of Forge, enters into, offers to enter into or announces that it proposes to enter into any joint venture or partnership involving a commitment of greater than \$1,000,000, or makes an announcement about such a commitment; or
- (d) other than in the ordinary course of business, Forge, or any subsidiary of Forge, incurs or commits to, or grants to another person a right the exercise of which would involve Forge or any subsidiary of Forge incurring or committing to any capital expenditure or liability for one or more related items of greater than \$500,000 (other than for matters in the nature of Construction Capex or an Operational Commitment) or makes an announcement about such a commitment.

**6. No break/inducement fees**

- (a) Subject to clause 6(b), during the Condition Period none of Forge, and any body corporate which is or becomes a subsidiary of Forge, pays or provides or agrees (whether conditionally or contingently) to pay or provide any benefit to any person, or foregoes or otherwise reduces any payment or benefit or agrees to forgo or reduce any payment or benefit to which it would otherwise be entitled, in connection with any person making or agreeing to participate in, or enter into negotiations concerning:
- (i) a takeover offer for Forge or any body corporate which is or becomes a subsidiary of Forge; or
  - (ii) any other proposal to acquire any interest (whether equitable, legal, beneficial or economic) in shares in, or assets of, Forge or any body corporate which is or becomes a subsidiary of Forge, or to operate Forge as a single economic entity with another body corporate.
- (b) Clause 6(a) does not apply to a payment, benefit or agreement:
- (i) for providing professional advisory services to Forge;
  - (ii) which is approved in writing by Clough;
  - (iii) which is approved by a resolution passed at a general meeting of Forge; or
  - (iv) which is made to, provided to, owed by or made with Clough.

**7. Conduct of Forge's business**

During the Condition Period, none of Forge, or any body corporate which is or becomes a

subsidiary of Forge, without the written consent of Clough:

- (a) declares, or distributes any dividend (excluding the 2010 financial year fully franked interim dividend of two cents per Forge Share as announced on the Announcement Date), bonus or other share of its profits or assets;
- (b) issues or grants options over, or agrees to issue or grant options over, or otherwise makes any commitments regarding any shares or other securities, or alters its capital structure or the rights attached to any of its shares or other securities, or issues or agrees to issue any convertible securities;
- (c) makes any change in its constitution or passes any special resolution;
- (d) borrows or agrees to borrow any money (except for temporary borrowing from its bankers in the ordinary course of business);
- (e) releases, discharges or modifies any substantial obligation to it of any person, firm or corporation or agrees to do so;
- (f) accepts as a settlement or compromise of any matter an amount that is at least \$350,000 less than the amount claimed by Forge;
- (g) has appointed any additional director to its board of directors whether to fill a casual vacancy or otherwise;
- (h) enters or agrees to enter into any contract of service or varies or agrees to vary any existing contract of service with any director or manager, or pays or agrees to pay any retirement benefit or allowance to any director, manager or other employee, or makes or agrees to make any substantial change in the basis or amount of remuneration of any director, manager or other employee (except as required by law or provided under any superannuation, provident or retirement scheme as in effect on the Announcement Date);

- (i) conducts its business otherwise than in the ordinary course;
- (j) has threatened or commenced against it any claims or proceedings in any court or tribunal which may result in damages or compensation payable greater than \$500,000 in aggregate;
- (k) executes a deed of company arrangement or passes any resolution for liquidation, or has appointed or becomes susceptible to the appointment of an administrator, a receiver, a receiver and manager or a liquidator, or becomes subject to investigation under the *Australian Securities and Investments Commission Act 2001* (Cth) or any corresponding legislation;
- (l) creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than for any hire purchase agreement or similar arrangement which is entered into after the Announcement Date in connection with the purchase of any single item of plant and equipment for less than \$1,000,000 that is intended to be used exclusively for on-site constructions under a Construction Contract;
- (m) increases the total remuneration for its employees (other than its Senior Executives) by greater than a 6% overall increase in total remuneration costs incurred by Forge for that group as at the Announcement Date, or otherwise varies the employment arrangements with any of its employees;
- (n) increases the remuneration of any of its non-executive directors or the Senior Executives, or otherwise varies the employment arrangements with any of the Senior Executives or its arrangements with any of its non executive directors;
- (o) accelerates the rights of any of its non-executive directors, Senior Executives or employees to compensation or benefits of any kind (including under any Forge executive or employee share plans);
- (p) pays any of its non-executive directors, Senior Executives or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the Announcement Date);
- (q) enters into, or agrees to enter into, a Construction Contract, or enters into any contract where there is no cap on total liability or with a cap on liability that is greater than the value of the contracted margin;
- (r) incurs, or commits to incur, any Construction Capex;
- (s) enters into, or agrees to enter into, an Operational Commitment or a contract that is not in the ordinary course of business;
- (t) terminates or amends in a material manner a Construction Contract, Construction Capex, Operational Commitment or any other contract material to the conduct of the business of Forge and its subsidiaries;
- (u) waives any material third party default; or
- (v) makes any change to its accounting practices or policies, other than to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standards or electing to form a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth).

## **8. Rights under certain agreements or instruments**

During the Condition Period, no person 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 Forge or any of its subsidiaries is a party, or by or to which Forge or any of its subsidiaries or any of its assets or businesses may be bound or be subject, which results, or which could be reasonably expected to result, in:

- (a) any moneys borrowed by Forge 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 under such agreement or instrument;
- (c) the interest of Forge or any of its subsidiaries in any firm, joint venture, trust corporation or other entity (or any arrangements relating to such interest) being terminated or modified;
- (d) all or substantially all of the assets of Forge 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 Forge or any of its subsidiaries with any other person being adversely affected.

## **9. No material adverse change to Forge**

During the Condition Period, no change occurs, is discovered or becomes public or becomes known to Clough (whether or not it becomes public) which has, or could reasonably be expected to have, a materially adverse effect on the business, assets,

liabilities, financial or trading position, performance, profitability or prospects of Forge and its subsidiaries taken as a whole or of any of them, including (but not limited to):

- (a) any creditor demanding repayment of a debt of \$250,000 or more;
- (b) any act or omission which would adversely impact upon any title, licence, permit or other authority remaining, in good standing and in full force and effect; and
- (c) a diminution or prospective diminution in value of Forge's assets (including, without limitation, the assets, liabilities, financial position, financial performance, financial position, profitability or prospects of Forge or its subsidiaries) in aggregate of \$2,500,000 or more or an increase or prospective increase in actual or contingent liabilities in aggregate of \$2,500,000 or more.

## **10. Index decline**

During the Condition Period, the S&P ASX200 Index does not close below 4,010 on any two consecutive trading days.

## **11. Option acquisition deed**

During the Condition Period, a Nominated Forge Optionholder being in breach of any provisions of an Option Acquisition Deed.

## **12. Call option over shares agreements**

During the Condition Period, a Forge Shareholder who is a party to a Call Option Over Shares Agreement being in breach of any provisions of that agreement.

**Definitions for this Appendix B are set out in Appendix F.**

## APPENDIX C - KEY TERMS OF THE STRATEGIC ALLIANCE AGREEMENT

### 1. Board nominations

- (a) For so long as the Clough Group holds in aggregate such number of Equity Securities which is not less than:
  - (i) 13% of the issued ordinary share capital of Forge at any time, Clough may nominate one person to be a member of the Forge Board (**Nominee Director**); and
  - (ii) 31% of the issued ordinary share capital of Forge at any time, Clough may nominate a person to be the independent chairman of the Forge Board, which is in addition to the right it has to appoint a Nominee Director.
- (b) Forge will do all things necessary to procure the resignation of existing members of the Forge Board immediately prior to the appointments pursuant to a nomination referred to above so that at no time there are more than four members of the Forge Board.
- (c) Clough may by notice to Forge remove and replace the Nominee Director, but Clough does not have the right to remove or replace the independent chairman nominated as set out in paragraph 1(a)(ii) above.
- (d) Clough and Forge agree that during the Standstill Period, the Forge Board will consist of four persons, namely:
  - (i) an independent chairman;
  - (ii) a CEO and executive director;
  - (iii) an independent director; and
  - (iv) the Nominee Director.

- (e) If at any time during the Standstill Period the Clough Group holds in aggregate such number of Equity Securities which is greater than 60% of the issued ordinary share capital of Forge at any time, the agreement set out in paragraph 1(d) will cease to apply.

### 2. Participation rights

- (a) Forge must give Clough three Business Days notice of any proposed offer of Equity Securities by it (other than a Participation Exception) (**Proposed Equity Offer**).
- (b) Forge must ensure that each Clough Shareholder may participate pro rata in the Proposed Equity Offer by offering for issue to each Clough Shareholder such number of Equity Securities so that the Clough Shareholder maintains its interest in the Fully Diluted Capital.
- (c) Subject to certain exceptions, Forge may suspend (but not terminate) Clough participation rights if Clough Shareholders beneficially own (in aggregate) less than 10% of the Fully Diluted Capital for a continuous period of 30 days after Forge gives notice to each Clough Shareholder of that fact.
- (d) Subject to certain exceptions, Forge may terminate Clough participation rights if Clough Shareholders beneficially own (in aggregate) less than 10% of the Fully Diluted Capital for a continuous period of six months after Forge gives notice to each Clough Shareholder of that fact.
- (e) Cloughs' participation rights described in this section are subject to Forge receiving written notice from ASX that the participation rights do not contravene Listing Rule 6.18 or a relevant waiver from ASX of Listing Rule 6.18.

### 3. Principles of cooperation

The Strategic Alliance Agreement sets out various ways by which Clough and Forge will assist and support each other, provided that any such arrangements do not contravene the provisions of the TPA, as follows:

- (a) Clough Group will assist Forge in its development and growth by providing access to experienced resources and proven processes within its management system and personnel that will assist in ensuring appropriate levels of management, control and governance to support its growth strategy across its operations;
- (b) Forge will assist and support Clough Group by being its partner of choice in all construction activities which in the opinion of Clough Group, match with Forge's capability and capacity;
- (c) Forge and Clough Group will develop a strategic plan for Forge that allows for greater focus and capacity to be directed towards the oil and gas and coal seam methane market sectors;
- (d) Forge will review its operations to look for standardisation and efficiency of approach across all of its operations and Clough Group will assist with this review as appropriate;
- (e) Forge will adopt certain specific Clough Group processes and principles; and
- (f) Clough Group will assist Forge to identify, for possible acquisition, businesses that will complement the Forge strategic growth plan and, where Clough is reasonably able to do so and it is appropriate, assist Forge with resources to undertake due diligence in respect of businesses that Forge and Clough Group agree should be considered for acquisition by Forge, and to identify potential sources of funding for such an acquisition.

### 4. Procedure for orderly sell down

- (a) During the Standstill Period, Clough Group agrees that none of the Clough Group will dispose of all or any interest in its Forge Shares without first giving Forge written notice of the intention to dispose of its Forge Shares (**Disposal Notice**).
- (b) Forge may give written notice to Clough Group within three Business Days from the date of receipt of a Disposal Notice of an alternative bona fide buyer or buyers for the Forge Shares the subject of the Disposal Notice at a price not less than the sale price specified in the Disposal Notice, in which event the member of the Clough Group holding the Forge Shares must Dispose of the Forge Shares the subject of the Disposal Notice to the buyer provided that the terms and conditions of the proposed sale (other than price) to the buyer are acceptable to Clough (acting reasonably and in good faith).
- (c) The restrictions set out in paragraphs 4(a) and 4(b) above do not apply in respect of any disposal of Forge Shares which: (i) taken together with any other disposal of Forge Shares by any member of the Clough Group in the preceding three-month period, does not exceed 5% of the issued ordinary share capital of Forge at the time of the later disposal; (ii) by way of acceptance of an offer made under a takeover bid for all of the Forge Shares, or pursuant to a pre-bid arrangement in respect of such a takeover bid; or (iii) pursuant to a scheme of arrangement between Forge and its shareholders under Chapter 5 of the Corporations Act.

## 5. Condition

The rights set out in paragraphs 2, 3 and 4 do not become binding if the Implementation Agreement terminates or unless, within four months:

- (a) the Clough Group holds in aggregate such number of Forge Shares which represents in aggregate not less than 31% of the issued ordinary share capital of Forge; or
- (b) Clough has made offers under the Proportional Takeover Bid, and has declared those offers unconditional; or
- (c) Subscription Completion occurs and:
  - (i) Clough does not make offers under the Proportional Takeover Bid, or Clough does make offers under the Proportional Takeover Bid but those offers lapse without becoming unconditional;
  - (ii) Clough exercises any Call Option Over Shares; and
  - (iii) as a result of Subscription Completion and the exercise of a Call Option Over Shares, the Clough Group holds in aggregate such number of Forge Shares which represents in aggregate not less than 19.98% of the issued ordinary share capital of Forge.

## 6. Termination

- (a) Clough and Forge each have the right to terminate if the other party becomes insolvent or if the other party commits a material breach that continues to exist for 14 days from the time of receiving notice of the material breach.

- (b) If the Clough Group does not hold voting power in at least 19.98% of the Forge Shares on issue at any time, each of Clough and Forge has the right to terminate the rights and obligations set out in paragraphs 3 and 4 above.
- (c) If a person other than a member of the Clough Group obtains at any time voting power in 20% or more (in aggregate) of the Forge Shares on issue at that time, Clough may terminate the rights and obligations set out in paragraphs 3 and 4 above.

**Definitions for this Appendix C are set out in Appendix F.**

## **APPENDIX D - KEY TERMS OF THE CALL OPTION OVER SHARES AGREEMENTS**

- (a) Clough has entered into Call Option Over Shares Agreements with the Major Shareholders in respect of 19.99% of the issued share capital of Forge.
- (b) The Major Shareholders are unassociated with the directors of Forge and have agreed to sell Clough their Call Option Shares at \$2.10 per share (being the same price as the Offer price) should Clough elect to exercise the Call Option Over Shares.
- (c) If the Subscription is approved by Forge Shareholders, the relevant interest that may be acquired by Clough under the Call Option Over Shares Agreements will reduce from 19.99% to approximately 6.96%.
- (d) The Call Option Over Shares can only be exercised by Clough during the Call Period.
- (e) If Subscription Completion occurs, the Call Option Over Shares may only be exercised in relation to all of the Call Option Shares. If Subscription Completion does not occur, the Call Option Over Shares may be exercised in relation to some or all of the Call Option Shares.
- (f) If Clough exercises the Call Option Over Shares, Clough must exercise all of the Call Option Over Shares under each of the Call Option Over Shares Agreements on the same proportional basis.
- (g) The Major Shareholders irrevocably undertakes to accept the Offer in respect of their Call Option Shares.
- (h) If the Major Shareholders validly accept the Offer in respect of their Call Option Shares and do not withdraw or purport to withdraw such acceptance in respect of any of their Call Option Shares, then:

- (i) if the Offer does not become void under section 650G of the Corporations Act, the Major Shareholders will receive for their Call Option Shares accepted into the Proportional Takeover Bid the consideration offered in accordance with the terms of the Proportional Takeover Bid and the Call Option Over Shares shall be taken to have lapsed and to have been of no further force and effect in relation to the Call Option Shares accepted into the Proportional Takeover Bid; or
- (ii) if the Offer does become void under section 650G of the Corporations Act, the Call Option Over Shares shall continue in force throughout the Call Period regardless of the fact that some or all of the shares the subject of the Call Option Over Shares Agreements were accepted into the Proportional Takeover Bid.

**Definitions for this Appendix D are set out in Appendix F.**

## **APPENDIX E - KEY TERMS OF THE OPTION ACQUISITION DEEDS**

- (a) Clough has entered into Option Acquisition Deeds with the Relevant Directors to acquire 3 million Forge Options at the Offer price (as may be varied in accordance with the Corporations Act) less the option exercise price of \$0.35.
- (b) Transfer of the Forge Options the subject of the Option Acquisition Deeds is subject to the Offer becoming unconditional and the close of the Offer.
- (c) Either Clough or the Relevant Directors may terminate the Option Acquisition Deeds if a Superior Proposal is made or announced before the close of the Offer and Clough:
  - (i) does not make a Counterproposal by the third Business Day after being provided with the required details of the Superior Proposal by Forge; or
  - (ii) does make a Counterproposal which the Forge Board considers is not more favourable to Forge Shareholders than the Superior Proposal.

**Definitions for this Appendix E are set out in Appendix F.**

## APPENDIX F – DEFINITIONS IN APPENDICES

In Appendices A to E:

**Acquisition** means:

- (d) the purchase by Forge or any of its subsidiaries of an asset, business or security where the purchase price of that asset, business or security is paid, whether in whole or in part, through the allotment by Forge of Equity Securities to the vendor of that asset, business or security;
- (e) an off-market bid within the meaning of the Corporations Act made by Forge or any of its subsidiaries; or
- (f) a scheme of arrangement under Part 5.1 of the Corporations Act.

**Announcement Date** means the date the Proportional Takeover Bid is publicly announced.

**Approval** means a licence, authority, consent, approval, order, exemption, waiver, ruling or decision.

**ASX** means ASX Limited ACN 008 624 691 trading as the Australian Securities Exchange.

**Business** means the business of project management, construction services and engineering design carried on by Forge as at the date of the Implementation Agreement.

**Business Day** means a weekday on which trading banks are open for business in Perth, Western Australia.

**Call Option Over Shares** means the call options over certain Forge Shares in favour of Clough contained in Call Option Over Shares Agreements.

**Call Option Over Shares Agreements** means the agreements dated on or about the Execution Date between Clough and the Major Shareholders which provide Clough with call options over the Call Option Shares.

**Call Option Shares** means the Forge Shares the subject of the Call Option Over Shares Agreements.

**Call Period** means:

- (a) if Subscription Completion occurs on or before 8 April 2010 and Clough makes the Offer, the period from the sixth Business Day after the first day of the Offer Period to 6.00pm (Perth time) on the day which is 10 Business Days after the last day of the Offer Period;
- (b) if Subscription Completion occurs on or before 8 April 2010 and Clough does not make the Offer, the period of 10 Business Days from the day Clough publicly announces it does not intend to make the Offer;
- (c) if the Forge Shareholders do not approve the Subscription, the period of 10 Business Days commencing on the date of the shareholder meeting to approve the Subscription; or
- (d) if Subscription Completion does not occur for any reason on or before 8 April 2010 and the Call Period has not commenced under paragraph (c) above, the period of 10 Business Days from 8 April 2010.

**Clough** means Clough Operations Pty Limited (ACN 109 444 279).

**Clough Group** means Parent and each of its subsidiaries (including Clough).

**Clough Shareholder** means:

- (g) Clough, if it beneficially holds Forge Shares; and
- (h) any member of the Clough Group who beneficially holds Forge Shares.

**Competing Proposal** means:

- (a) any expression of interest, proposal or offer by any person (other than Clough or its associates) made in writing to Forge to evaluate or enter into any transaction (whether a scheme of arrangement, a takeover bid or

otherwise) or under which, other than as required or contemplated by the Proportional Takeover Bid:

- (i) that person (together with its associates) may acquire a relevant interest in 15% or more of the Forge Shares;
  - (ii) that person may acquire, directly or indirectly (including by way of joint venture, dual listed company structure, strategic alliance or otherwise), any interest in all or a substantial part of the Business or assets of Forge; or
  - (iii) that person may otherwise acquire control of, or merge or amalgamate with, Forge; or
- (b) any acquisition of, or agreement to acquire, a relevant interest in 15% or more of the Forge Shares by any person (other than Clough or its associates).

**Condition Period** means the period beginning on the Announcement Date and ending at the end of the Offer Period.

**Conditions** means the conditions which are set out in Appendix B to this Explanatory Memorandum (and Condition means any one of them).

**Construction Capex** means capital expenditure in excess of \$1,000,000 on a single item of plant or equipment intended to be used exclusively for on-site construction operations under a Construction Contract.

**Construction Contract** means:

- (a) a construction contract or commitment;
- (b) a tender for a construction contract or commitment; or
- (c) a letter of intent for a construction contract or commitment, involving revenue or expenditure of more than \$25,000,000 over the term of the contract or commitment, but does not include any of (a) to (c) where they were

entered into, submitted or received (or arise from any such matter, in each case, as appropriate) prior to the date of the Implementation Agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Counterproposal** means an offer by Clough to amend the terms of the Transaction or propose any other transaction.

**Equity Security** has the meaning given to that term in the ASX Listing Rules.

**Execution Date** means the date upon which the last party to the Implementation Agreement executes the Implementation Agreement.

**Forge** means Forge Group Limited ABN 58 065 464 226.

**Forge Board** means the board of directors of Forge.

**Forge Option** means an option to subscribe for a new Forge Share, which option is on issue as at the Execution Date.

**Forge Optionholder** means each person who is registered in Forge's register of optionholders as a holder of a Forge Option.

**Forge Shareholders** means the holders of Forge Shares.

**Forge Shares** means fully paid ordinary shares in Forge.

**Fully Diluted Capital** means the total number of Forge Shares plus the number of Forge Shares that would be issued on exercise or conversion of any Equity Securities (other than Forge Shares) which are on issue (or which Forge has agreed or proposes to agree to issue).

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, statutory or judicial entity, authority or agency, whether in Australia or elsewhere, including the Australian Competition and Consumer Commission (but excluding the Takeovers Panel, ASIC and any court that hears or

determines proceedings under section 657G or proceedings commenced by a person specified in section 659B(1) of the Corporations Act in relation to the Proportional Takeover Bid). It also includes any self-regulatory organisation established under statute or any stock exchange.

**Implementation Agreement** means the Placement and Bid Implementation Agreement between Clough, Forge and Parent executed on the Execution Date.

**Listing Rules** means the official listing rules of ASX.

**Major Shareholders** mean Temorex Pty Ltd ACN 061 621 896, Chisholm Nominees (WA) Pty Ltd ACN 009 318 110, Allise Pty Ltd ABN 44 009 282 115 and Barry McRostie.

**Nominated Forge Optionholder** means Seafire Holdings Pty Ltd ACN 087 510 861 and Molonglo Pty Ltd ACN 009 305 944.

**Offer** means each offer to acquire Forge Shares to be made by Clough to each Forge Shareholder under the Proportional Takeover Bid on terms consistent with the Implementation Agreement.

**Offer Date** means the date Clough's bidder's statement is first dispatched to Forge Shareholders or such other date agreed on in writing by the parties.

**Offer Period** means the period during which the Offer is open for acceptance.

**Operational Commitment** means a contract (other than for matters in the nature of a Construction Contract regardless of whether it involves revenue or expenditure of more than \$25,000,000) or commitment (other than for matters in the nature of Construction Capex regardless of whether it involves expenditure in excess of \$1,000,000) requiring payments over the term of the contract or commitment in excess of \$350,000.

**Option Acquisition Deed** means an option acquisition deed dated 23 February 2010 between the Relevant Directors and Clough.

**Parent** means Clough Limited ACN 008 678 813.

**Participation Exception** means:

- (a) an issue of Forge Shares as a result of the exercise of options or other Equity Securities in Forge;
- (b) an issue of Forge Shares or other Equity Securities in Forge to employees, officers, consultants or directors of Forge pursuant to a compensation or incentive scheme established before the date of this document for the benefit of employees, officers, directors or consultants of Forge;
- (c) an issue of Forge Shares under a dividend reinvestment plan or bonus share plan of Forge which does not exclude participation by Clough; or
- (d) an issue of Forge Shares or other Equity Securities pursuant to an Acquisition.

**Proportional Takeover Bid** means an off-market takeover bid for 50% of each Forge Shareholder's Forge Shares to be implemented in accordance with Chapter 6 of the Corporations Act.

**Relevant Directors** means Peter Hutchinson and Andrew Ellison, or entities controlled by them.

**Senior Executives** means the senior executives of Forge being each of Peter Hutchinson, Andrew Ellison, Greg McRostie, Brett Leyonhjelm, Richard Eden, Max Evans, James Todhunter, Michael Kenyon and Stefan Willett.

**Standstill Period** means a period of two years commencing on the date on which the condition to the Strategic Alliance Agreement is satisfied.

**Strategic Alliance Agreement** means the Strategic Alliance Agreement between Forge and Clough dated 23 February 2010.

**Subscription** means the application by Clough to Forge for the allotment and issue of the Subscription Shares.

**Subscription Completion** means completion of the subscription for, and allotment and issue of, the Subscription Shares in accordance with the Implementation Agreement.

**Subscription Completion Date** means the

- (a) two Business Days after satisfaction (or waiver) of the Subscription Conditions Precedent; and
- (b) any other date agreed in writing by Clough, Forge and Parent.

**Subscription Conditions Precedent** means the conditions precedent to Subscription Completion which are set out in the Implementation Agreement.

**Subscription Shares** means 10,257,262 fully paid Forge Shares.

**Superior Proposal** means a Competing Proposal that in the determination of the Forge Board acting in good faith:

- (a) is reasonably capable of being valued and completed, taking into account both the nature of the Competing Proposal and the person or persons making it; and
- (b) in order to satisfy what the Forge Board considers to be its fiduciary or statutory duties would, if completed substantially in accordance with its terms, result in a transaction more favourable to Forge Shareholders than the Transaction,

provided that an independent financial adviser has provided a written opinion to the Forge Board which supports the determination of the matters in paragraphs (a) and (b) above.

**Transaction** means the proposed subscription by Clough for the Subscription Shares and acquisition of 50% of Forge's issued share capital by Clough through implementation of the Proportional Takeover Bid in accordance with the terms of the Implementation Agreement.

**TPA** means the Trade Practices Act 1974 (Cth).

