

# M

COMPANIES FORM No. 395

## Particulars of a mortgage or charge

# 395

Please do not  
write in  
this margin

Pursuant to section 395 of the Companies Act 1985

*J*Please complete  
legibly, preferably  
in black type, or  
bold block letteringTo the Registrar of Companies  
(Address overleaf—Note 5)

For official use

Company number

[5][U][£]

153935

Name of company

\* W. KELLETT &amp; CO. LIMITED ("the Company")

\* insert full name  
of company

Date of creation of the charge

24 MARCH 1995

Description of the instrument (if any) creating or evidencing the charge (note 2)

Guarantee and Debenture ("the Debenture")

Amount secured by the charge

"The Liabilities", defined in the Debenture as meaning all moneys, debts and liabilities which were at the date of the Debenture or before that date or thereafter may be or become due, owing or incurred by any Charging Company to any Secured Creditor, on any current or other account or otherwise in any manner whatsoever (in each case, whether alone or jointly, or jointly and severally, with any other Person, whether actually or contingently and whether as principal debtor, guarantor, surety or otherwise).

Names and addresses of the chargees or persons entitled to the charge

N M ROTHSCHILD &amp; SONS LIMITED ("the Trustee")

NEW COURT, ST. SWITHIN'S LANE,

LONDON

Postcode

EC4P 4DU

4 APR 1995

Presentor's name address and  
reference (if any):Linklaters & Paines  
Barrington House  
59-67 Gresham Street  
London EC2V 7JA  
Ref: RJE/ERECFor Official Use  
Mortgage Section**REGISTERED**

- 4 APR 1995

Post Room

Time critical reference



Short particulars of all the property charged

The Company as beneficial owner and as continuing security for the payment and discharge of all Liabilities charges in favour of the Trustee for the Secured Creditors:-

(A) by way of first legal mortgage, all Real Property in England and Wales now belonging to it, including that listed in Schedule 1

(B) by way of first fixed equitable charge, all Real Property belonging to it at the date of the Debenture (except that charged by paragraph (A) and all Real Property acquired by it after the date of the Debenture

(C) by way of first fixed charge:-

(i) all Debt Security and Bank Accounts

(ii) all its present and future Investments, Rights attaching or relating to Investments and all cash or other Investments hereafter belonging to it and deriving from Investments or such Rights

(continued, Continuation Sheet 1, page 4)

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

Particulars as to commission allowance or discount (note 3)

NONE

Signed L. M. L. & P. L. L. Date 31<sup>st</sup> March 1995

On behalf of ~~company~~ [chargee]†

† delete as appropriate

## Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his;
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,
 for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 The address of the Registrar of Companies is:-  
Companies House, Crown Way, Cardiff CF4 3UZ

**Particulars of a mortgage or charge  
(continued)**

Please do not  
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Continuation sheet No 1  
to Form No 395 and 410 (Scot)

Please complete  
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Company number

153935

Name of company

W. KELLETT & CO.

Limited\*

\*delete if  
inappropriate

Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

- (iii) all its present and future uncalled capital and goodwill
  - (iv) all its present and future Intellectual Property and the benefit of all present and future licences and sub-licences of Intellectual Property granted either by or to it
  - (v) any beneficial interest, claim or entitlement of the Company in any pension fund
  - (vi) all its present and future plant and machinery (except that charged by paragraphs (A) and (B)) and
  - (vii) all its present and future Insurances and all proceeds in respect of Insurances and all benefits thereof (including all claims of whatsoever nature relating thereto and returns of premium in respect thereof).
- (D) by way of first floating charge, its undertaking and all its Assets, both present and future (including Assets expressed to be charged by paragraphs (A) to (C)).

Notes

The Debenture provides that:-

I The floating Charge created by the Company referred to in paragraph (D) ranks behind all the fixed Charges created by or pursuant to the Debenture but ranks in priority to any other Security thereafter created by the Company except for Security permitted by paragraph III to rank in priority and except for Security ranking in priority in accordance with Clause 11.3.5 of the Debenture, pursuant to which a Receiver has the right, inter alia, to raise money on the security of the Charged Assets.

II The Trustee may be notice to the Company convert the floating Charge created by the Company by paragraph (D) into a fixed Charge as regards such Charged Assets as shall be specified (whether generally or specifically) in that notice:-

(a) if (acting reasonably) it considers that those Charged Assets are in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy and/or

(b) on or at any time following the occurrence of an Enforcement Event (and whilst the Enforcement Event is continuing at the relevant time).

If, without the prior consent in writing of the Trustee, the Company creates any Security in breach of paragraph III over any of the Charged Assets not expressed to be subject to a fixed Charge under the Debenture, or attempts to do so, or if any Person levies or attempts to levy any distress, attachment, execution or other legal process against any of those Charged Assets, the floating Charge created by the Debenture over the Charged Assets the subject of such Security or process shall automatically, without notice, be converted into a fixed Charge instantly such event occurs.

III The Company shall not create or have outstanding any Security on, over or with respect to any of its present or future Assets except for:-

(a) the Charges and

(b) any other Security permitted by the terms of the Financing Documents.

(continued, Continuation Sheet 2, page 4)

**Particulars of a mortgage or charge  
(continued)**

Please do not  
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Continuation sheet No 2  
to Form No 395 and 410 (Scot)

Please complete  
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Name of company

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Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

IV Save as provided in the Debenture, or as permitted by the Financing Documents, the Company shall not sell, factor, discount, transfer, assign, lease or hire out, lend or otherwise dispose of any of its present or future Assets nor agree to do any of the foregoing except that, until:-

- (a) the floating Charge crystallizes or
- (b) the Charges become enforceable and the Trustee takes any step to enforce the Charges or gives notice to the Company that this exception is no longer to apply

the Company may hold, enjoy and deal in the ordinary course of its business with those of its Assets which are at the relevant time not expressed to be subject to a fixed Charge.

V Without prejudice to paragraph IV, the Company shall not in relation to any of its Real Property:-

- (a) grant any Rights over its Real Property
- (b) exercise any of the powers of leasing or agreeing to lease vested in or conferred on mortgagors by common law or by statute
- (c) create a tenancy of any kind
- (d) part with or share possession or occupation
- (e) accept the surrender of any lease, underlease or tenancy or
- (f) agree to do any of the foregoing.

VI Without prejudice to paragraph IV, the Company shall not in relation to any of its present or future Intellectual Property or any part thereof grant any exclusive registered user agreement or exclusive licence.

VII The Company shall ensure that, immediately upon receipt by Spaldings Limited of any notification from the Trustee, it and/or such (if any) of its Subsidiaries incorporated in any part of the United Kingdom or the Republic of Ireland as may be specified in that notification (whether or not it or the relevant Subsidiary became a member of the Group before, on or after the date of the Debenture) shall execute and deliver to the Trustee at the cost of the Company and in a form satisfactory to the Trustee

- (a) such guarantee of the Liabilities, and/or such Security for the Liabilities over such Assets of the Company and/or, as the case may be, any such specified Subsidiary and
- (b) such evidence, certificates and legal opinions as to powers, authorisations and execution and such other matters as the Trustee may require.

In this Form and the continuation sheets thereto, except to the extent that the context requires otherwise:-

"Additional Charging Companies" means, at any particular time, such (if any) members of the Group (other than the Company and the Original Charging Companies) incorporated in any part of the United Kingdom or the Republic of Ireland as shall have created the guarantees and fixed and floating charges over all their Assets in favour of the Trustee pursuant to the Composite Debenture or pursuant to the Guarantee and Debenture or pursuant to the Debenture

(continued, Continuation Sheet 3, page 4)

**Particulars of a mortgage or charge  
(continued)**

Please do not  
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Continuation sheet No 3  
to Form No 395 and 410 (Scot)

Please complete  
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Name of company

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Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

**"Administration"** means administration under Part II of the Insolvency Act

**"Assets"** means, in relation to any Person, all or any part of its business, undertaking, property, assets, revenues, Rights and uncalled capital, wherever situated

**"Bank Accounts"** means any current, deposit or other accounts now or hereafter held by the Company with any Person (including N M Rothschild & Sons Limited as lender) and all balances now or hereafter standing to the credit of any such current, deposit or other account

**"Book Debts"** means all book and other debts of any nature whatsoever (excluding Bank Accounts), now or hereafter due or owing to the Company

**"Charged Assets"** means Assets from time to time subject, or expressed to be subject, to the Charges or any part of those Assets

**"Charged Investments"** means Investments from time to time subject, or expressed to be subject, to the Charges or any part of those Investments

**"Charges"** means all or any of the Security created, or which may at any time be created, by or pursuant to the Debenture

**"Charging Companies"** means, at any time, all of the Original Charging Companies and the Additional Charging Companies, other than any such company all of whose Assets have been released by the Trustee from the relevant security and **"Charging Company"** means any of them

**"Composite Debenture"** means the composite fixed and floating charge debenture granted by Spaldings Limited, Spaldings (UK) Limited and S.A.H.L. (Predecessors) Limited in favour of the Trustee on 11 June 1993

**"Debt Security"** means the benefit of all negotiable instruments, Rights, Security, guarantees and indemnities of any nature whatsoever now or hereafter enjoyed or held by the Company in relation to Book Debts

**"Delegate"** means a delegate or sub-delegate appointed by the Trustee, directly or indirectly, pursuant to Clause 12.3 of the Debenture

**"Enforcement Event"** means the occurrence at any time and for any reason, whether within or beyond the control of any party to the Debenture, of any of the following events:-

(a) **Failure to Discharge:** Any Charging Company fails to discharge any Liability immediately upon it becoming due or, in the case of Liabilities which are due on demand, the Trustee demands that a Charging Company discharge those Liabilities.

(b) **Administration:** Any step is taken by any Person with a view to the Administration of a Charging Company.

(c) **Insolvency:** Any Charging Company stops or suspends or threatens to stop or suspend payment of all or a material part of (or a particular type of) its debts, or is unable to pay its debts, or is deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act as in force at the date hereof (except that, in the interpretation of this paragraph (c), the words "it is proved to the satisfaction of the court that" in Section 123(1)(e) and Section 123(2) and Section 214(1)(c) shall be deemed to be deleted).

(continued, Continuation Sheet 4, page 4)



**Particulars of a mortgage or charge  
(continued)**

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Continuation sheet No 4  
to Form No 395 and 410 (Scot)

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Name of company

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Limited\*

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Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

ort particulars of all the property mortgaged or charged (Continued)

(d) Arrangements with Creditors: The directors of any Charging Company make any proposal under Section 1 of the Insolvency Act, or any Charging Company proposes or makes any agreement for the deferral, rescheduling or other readjustment (or proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all of (or all of a particular type of) its debts (or of any part which it will or might otherwise be unable to pay when due), or a moratorium is agreed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of any Charging Company.

(e) Enforcement Proceedings: A distress, attachment, execution or other legal process is levied, enforced or sued out on or against any of the Charged Assets as defined herein or any of the Charged Assets, as defined in the Composite Debenture.

(f) Security Enforceable: Any Security on or over the Assets of any Charging Company becomes enforceable and any step (including the taking of possession or the appointment of a receiver, administrative receiver, manager or similar Person) is taken to enforce that Security.

(g) Stopping Business/Winding-up: Any step is taken by any Person with a view to the Winding-up of any Charging Company, or any Charging Company ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Trustee before that step is taken.

(h) Analogous Events: Any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

(i) Breach of Representation or Warranty: Any representation, warranty or statement by any Charging Company in the Financing Documents or in any document delivered under any of them is not complied with or is or proves to have been incorrect.

(j) Breach of Undertaking: Any Charging Company does not perform or comply with any one or more of its obligations under the Financing Documents (other than an obligation for payment to which paragraph (a) above or Clause 10.2.1 of the Composite Debenture applies) or any condition attached to any waiver or consent given under the Financing Documents is not fulfilled and, in the case only of default in respect of any of the undertakings set out in Schedule 2.1 to the Debenture or in Schedule 2.1 to the Composite Debenture which is capable of remedy within 14 days, that default is not remedied within 14 days after notice of that default has been given to it by the Trustee.

(k) Subsidiaries: The happening in relation to any Subsidiary of a Charging Company of any of the events specified in paragraphs (b) to (h) (inclusive) above or in Clauses 10.2.2 to 10.2.8 of the Guarantee and Debenture, if, in the opinion of the Trustee, that event has had or could have a material adverse effect on (i) the financial condition or business of that Charging Company and its Subsidiaries taken as a whole or (ii) the ability of that Charging Company to perform and comply with its obligations under the Financing Documents.

"Facility Letter" means a facility letter dated 2nd July 1993 as amended and restated as at 24th March 1995 and addressed to Spaldings Limited, Spaldings (Ireland) Limited and W. Kellett & Co. Limited from N M Rothschild & Sons Limited

(continued, Continuation Sheet 5, page 4)

**Particulars of a mortgage or charge  
(continued)**

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Continuation sheet No 5  
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Name of company

W. KELLETT & CO.

Limited\*

\*delete if  
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Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

"Financing Documents" means the Facility Letter, any document evidencing any facilities replacing that set out in the Facility Letter or any document evidencing any successor facilities thereto, the Debenture, the Composite Debenture and any other document conferring Security in respect of any of the foregoing facilities and including without limitation any guarantee, indemnity, letter of credit or other instrument arising out of or relating to such facilities

"Fixtures" means, in relation to any Person, the fixtures (including trade fixtures), growing crops, and fixed plant, machinery and apparatus belonging to it

"Group" means at any particular time, Spaldings Limited and all its Subsidiaries (and "member of the Group" and "Group Company" shall be construed accordingly)

"Guarantees" means the obligations of the Company pursuant to Paragraph II above

"Insolvency Act" means the Insolvency Act 1986

"Insurances" means all contracts and policies of insurance of any kind now or hereafter taken out by or on behalf of the Company or (to the extent of its interest) in which the Company now or hereafter has an interest

"Intellectual Property" means patents and registered designs, copyrights, unregistered designs, semi-conductor topographies, rights in trademarks and service marks whether registered or not, goodwill and rights in confidential information and know-how and any associated or similar rights which may now or hereafter exist (including, where applicable, applications and rights to apply therefor)

"Investments" means (a) shares, stock and debentures (including debenture stock, loan stock, bonds, notes and certificates of deposit), (b) warrants, options or other Rights to subscribe for, purchase, call for delivery of or otherwise acquire shares, stock or debentures, (c) all Rights relating to shares, stock or debentures which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager or other similar Person or the holder of any Security or such holder's nominee, in each case whether or not on a fungible basis (including rights against any such Person) and (d) any other Securities in, of or created by any Person

"LPA" means the Law of Property Act 1925

"Original Charging Companies" means Spaldings Limited, S.A.H.L. (Predecessors) Limited, Spaldings (UK) Limited and Spaldings (Ireland) Limited

"Person" includes any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal Personality)

"Real Property" means, in relation to any Person, all or any part of its freehold and leasehold property in England and Wales and other real property anywhere in the world and any estate or interest therein and any reference to Real Property includes a reference to all Rights from time to time attached or appurtenant thereto and all buildings, and all Fixtures belonging to that Person from time to time therein or thereon

(continued, Continuation Sheet 6, page 4)

**Particulars of a mortgage or charge  
(continued)**

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Continuation sheet No 6  
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Please complete  
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\*delete if  
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Description of the instrument creating or evidencing the mortgage or charge (continued) (note 2)

"Receiver" means an administrative receiver, receiver and manager or other receiver appointed in respect of the Charged Assets (whether appointed pursuant to the Debenture, pursuant to any statute, by a court or otherwise)

"Rights" means rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever)

"Secured Creditor" means N M Rothschild & Sons Limited (as trustee, agent and bank), Hambros Bank Limited (as bank) and the Hedging Counterparty (meaning N M Rothschild & Sons Limited or Hambros Bank Limited as the case may be, pursuant to the Facility Letter)

"Security" includes any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect (including any "hold-back" or "flawed asset" arrangement) (and "secured" shall be construed accordingly) but excluding retention of title in respect of Assets purchased in the ordinary course of business

"Subsidiary" has the meaning ascribed to it by Sections 736 and 736(A) of the United Kingdom Companies Act 1985 and also includes a subsidiary undertaking, which has the meaning ascribed to it by Section 258 of the United Kingdom Companies Act 1985

"Tax(es)" includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed

"Trust Deed" means a Deed of Security Trust and Variation dated 24th March 1995 between N M Rothschild & Sons Limited (as trustee, bank and agent), Hambros Bank Limited (as bank) and the other companies named therein

"Trustee" means N M Rothschild & Sons Limited as trustee for the Secured Creditors (and shall also include all other persons from time to time and for the time being the trustee or trustees for the Secured Creditors under the Trust Deed)

the "Winding-up" of a Person also includes the amalgamation, reconstruction, reorganisation, dissolution, liquidation, merger or consolidation of that Person, and any equivalent or analogous procedure under the law of any applicable jurisdiction (and "Wound-up" shall be construed according).

#### SCHEDULE 1

#### REAL PROPERTY

1. Freehold land and buildings at Stevenson Way, Sheffield, South Yorkshire (and all fixtures and fittings therein and thereon) as shown registered at H.M. Land Registry with absolute title under title number SYK280008.
2. Freehold land and buildings at Stevenson Way, Sheffield, South Yorkshire (and all fixtures and fittings therein and thereon) in the course of registration at HM Land Registry with title reference number SYK353455.
3. Leasehold land and buildings known as Unit 14 Orgreave Close, Dore House Industrial Estate Sheffield, South Yorkshire (and all fixtures and fittings therein and thereon save for landlord's fixtures and fittings) registered at HM Land Registry with absolute title under title number SYK219213.

FILE COPY




## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 00153935

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A GUARANTEE AND DEBENTURE DATED THE 24th MARCH 1995 AND CREATED BY W.KELLETT & CO.LIMITED FOR SECURING ALL MONEYS,DEBTS AND LIABILITIES DUE OWING OR INCURRED BY ANY CHARGING COMPANY AS DEFINED TO ANY SECURED CREDITOR AS DEFINED ON ANY CURRENT OR OTHER ACCOUNT OR OTHERWISE IN ANY MANNER WHATSOEVER WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 4th APRIL 1995.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 5th APRIL 1995.

  
J. M. EVANS

for the Registrar of Companies



COMPANIES HOUSE

HC026B