



Registration of a Charge

Company name: **H. J. HEINZ FROZEN & CHILLED FOODS LIMITED**
Company number: **02207650**



X3NVNWH4

Received for Electronic Filing: **31/12/2014**

Details of Charge

Date of creation: **16/12/2014**
Charge code: **0220 7650 0001**
Persons entitled: **H J HEINZ TRUST LIMITED (AS TRUSTEE)**

Brief description:

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

PINSENT MASONS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2207650

Charge code: 0220 7650 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th December 2014 and created by H. J. HEINZ FROZEN & CHILLED FOODS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st December 2014 .

Given at Companies House, Cardiff on 2nd January 2015

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 16 December 2014

(1) FALL RIDGE PARTNERS LLP, H.J. HEINZ COMPANY LIMITED, HP FOODS LIMITED, H.J. HEINZ MANUFACTURING UK LIMITED, H.J. HEINZ FOODS UK LIMITED, H.J. HEINZ FROZEN & CHILLED FOODS LIMITED, HEINZ SINGLE SERVICE LIMITED (the "Chargees")

(2) H J HEINZ TRUST LIMITED (the "Trustee") as trustee of the Heinz Management Plan

FLOATING CHARGE


Pinsent Masons

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THIS DEED is made on
BETWEEN:-

16 December

2014

- (1) THE COMPANIES LISTED IN SCHEDULE 1 whose registered offices are also set out in Schedule 1 (the "Chargors"); and
- (2) H J HEINZ TRUST LIMITED as trustee of the Heinz Management Pension Plan (registered in England and Wales with company no. 01222557) (the "Trustee").

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 Definitions

"Administrator"

means a person appointed under Schedule B1 to the Insolvency Act 1986 to manage a Chargor's affairs, business and property

"Charged Property"

means the undertaking and assets, present and future and wherever situated of the Chargors

"Default Rate"

means two per cent (2%) above the base rate from time to time of HSBC Bank plc

"Event of Default"

means the occurrence of an event as set out in Clause 5

"Exchange Rate"

means the US Federal Reserve Bank of New York published noon rate on the balance sheet date for the relevant accounts at which the value of the UK trademarks is converted into US dollars for the purposes of such accounts

"LPA"

means the Law of Property Act 1925

"Material Effect"

Detrimental

means circumstances which are materially detrimental in the context of the Chargors as a whole to the likelihood of the accrued benefits being received in relation to the Scheme.

"Permitted Security"

means:-

- (a) any Security created or arising hereunder;
- (b) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any Chargor;
- (c) any Security created or arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Chargor in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Chargor; or
- (d) any Security created or arising as a consequence of any finance lease made in the ordinary course of business
- (e) a legal mortgage contained in an option agreement dated 31 March 2014 between BTMU Capital Leasing & Finance, Inc and H.J. Heinz Manufacturing UK Limited over the interest of H.J. Heinz Manufacturing UK Limited in the property known as Wincanton, Fourmarts Road, Wigan WN5 0LR (registered at HM Land Registry with freehold title number GM837000) pursuant to a Lease of the same date between BTMU Capital Leasing & Finance, Inc and H.J. Heinz Manufacturing UK Limited

"Receiver"

means any receiver, or receiver and manager of the whole or any part of the Charged Property

"Regulations"

means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/2336) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements and "Regulator" means, any of them

"Scheme"

means the Heinz Management Pension Plan

"Secured Liabilities"

means any liability due, owing or payable by a Chargor to the Trustee under or in connection with the Scheme (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise) including any amount due and payable under any guarantee granted by a Chargor in favour of the Trustee (together the "Secured Liabilities") up to a maximum aggregate amount as set out in Clause 2.2

"Security"

means any mortgage, charge, pledge, lien, or other security interest securing any obligation of any person or any other agreement or arrangement having similar effect

"Subsidiary"

means a subsidiary within the meaning of section 1159 of the Companies Act 2006 and, unless the context requires otherwise, a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

"Trademark Value"

means the audited consolidated US balance sheet value of the trademarks owned by the Chargers valued under US GAAP contained in the annual audited consolidated accounts of H.J. Heinz Company

1.2

Interpretation

Unless the contrary intention appears, references in this Deed to:-

1.2.1 "assets" includes present and future properties, revenues and rights of every description;

1.2.2 a "disposal" includes a sale, transfer, assignment, grant, lease or other disposal whether voluntary or involuntary, and "dispose" shall be construed accordingly;

1.2.3 an agreement is a reference to that agreement as amended, novated, supplemented, extended or restated (however fundamentally);

1.2.4 the words "include(s)", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;

1.2.5 the "Trustee", the "Chargors" or any other person shall be construed so as to include successors in title, permitted assigns and permitted transferees;

1.2.6 the words "other" and "otherwise" shall not be construed ejusdem generis with any preceding words where a wider construction is possible;

1.2.7 a "person" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;

1.2.8 a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

1.2.9 words importing the singular shall include the plural and vice versa, and reference to any gender includes the other genders;

1.2.10 references to "Clauses" and "Schedules" are to clauses or sub-clauses and schedules of this Deed;

1.2.11 a provision of law is a reference to that provision as amended or re-enacted, and

1.3

Clause and Schedule headings are for ease of reference only.
An Event of Default is "continuing" if it has not been waived in writing.

1.4 **Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Trustee.

1.5 **Third party rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

2. **FLOATING CHARGE AND SECURED LIABILITIES**

2.1 **Creation of Floating Charge**

2.1.1 As a continuing security for the payment and discharge of the Secured Liabilities the Chargors with full title guarantee charge to the Trustee by way of first floating charge all of their rights, title and interest from time to time in the whole of their property, assets and undertaking, present and future and wherever situated including, without limitation, any heritable property situated in Scotland.

2.1.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 will apply to the floating charge created by this Deed.

2.2 **Secured Liabilities**

The maximum aggregate amount of the Secured Liabilities shall be equal to the greater of (a) the lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being at least one hundred and five per cent funded on the date on which any liability under this Deed arises, calculated on the basis set out in section 179 of the Pensions Act 2004, were a valuation to be conducted as at that date, and (b) the amount due under the recovery plan prepared under section 226 of the Pensions Act 2004 and then in place for the Scheme.

3. **CRYSTALLISATION OF FLOATING CHARGE**

3.1 **Crystallisation: By Notice**

The Trustee may at any time by notice in writing to the Chargors convert the floating charge created by Clause 2 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if an Event of Default has occurred.

3.2 **Crystallisation: Automatic**

The floating charge created by Clause 2 (*Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets subject to the floating charge if:-

3.2.1 the Chargors create or attempt to create any Security (other than Permitted Security) over any of the Charged Property; or

3.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property in an amount more than £30,000,000 or, if the Trademark Value is less than £750,000,000, £15,000,000, or

3.2.3 any step is taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional

liquidator, administrator or Receiver in respect of a Chargor, over all or any part of its assets, or if such person is appointed.

3.3 Crystallisation: Moratorium where directors propose voluntary arrangement

The floating charge created by Clause 2 (*Floating Charge*) may not be converted into a fixed charge solely by reason of:-

3.3.1 the obtaining of a moratorium, or

3.3.2 anything done with a view to obtaining a moratorium

under Schedule A1 to the Insolvency Act 1986.

4. RESTRICTIONS AND FURTHER ASSURANCE

4.1 Security

The Chargors shall not create or permit to subsist any Security (other than Permitted Security) over any of the Charged Property.

4.2 Headroom notification

4.2.1 The Chargors shall promptly notify the Trustee if the Trademark Value is less than £750,000,000.

4.2.2 Within 30 days of the annual audited consolidated accounts of H.J. Heinz Company being filed, the Chargors shall procure that H.J. Heinz Company prepares, and they shall deliver to the Trustee, a statement in the form set out in Schedule 2 or such other form as the parties may agree, containing the relevant amounts as extracted from such accounts, and shall use their best endeavours to procure that the mathematical accuracy of the amounts contained in each such statement is confirmed in a letter addressed to the Trustee by the auditors at the relevant time of H.J. Heinz Company and delivered to the Trustee with the relevant statement. Where such statement contains amounts in US dollars such amounts shall be converted into pounds sterling for the purposes of calculating the Trademark Value by reference to the applicable Exchange Rate.

4.3 Notification of Intended Disposal

If the Chargors or any of their Subsidiaries intend to make any disposal of their assets the effect of which would be to reduce the Trademark Value to below £750,000,000 or where the value of such trademarks is below £750,000,000, the effect of which would be to reduce further the Trademark Value, the Chargors will consult with the Trustee for a period of not less than 30 days prior to the entering into of any binding commitment in relation to such disposal.

4.4 Disposal

4.4.1 If the Trademark Value is less than £750,000,000, notwithstanding Clause 4.4.2, the Chargors shall not be entitled to sell, lease, licence, sub-licence, transfer or otherwise dispose of any Charged Property in circumstances where such sale, lease, licence, sub-licence, transfer or other disposal is reasonably likely to have a Material Detrimental Effect without the prior written consent of the Trustee.

4.4.2 The Chargors shall, without prejudice to Clause 4.4.1, prior to this Security created by this Deed becoming enforceable or the occurrence of the

crystallisation pursuant to Clause 3 of the floating charge created by Clause 2, be entitled to sell, lease, license, sub-license, transfer or otherwise dispose of any Charged Property and any Charged Property so disposed of shall be automatically released from the Security created by this Deed without the need for execution of any further documentation.

4.4.3 Notwithstanding Clauses 4.4.1 and 4.4.2 above, the Trustee shall, on request of any of the Chargors, do whatever is reasonably necessary in order to give effect to any permitted disposal under Clause 4.4.1 or Clause 4.4.2. The relevant Chargor shall, on request of the Trustee, pay all reasonable costs incurred by the Trustee in doing so.

4.5 Further assurance

The Chargors shall promptly do at their own cost and expense whatever the Trustee:-

4.5.1 requires to perfect or protect the Security created or expressed to be created by this Deed, or its priority; or

4.5.2 reasonably requires to facilitate the realisation of the Charged Property or the exercise of any rights vested in the Trustee or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Property (whether to the Trustee or its nominees or otherwise), making any registration and giving any notice, order or direction.

4.6 Financial statements

Each Chargor shall supply to the Trustee:-

4.6.1 as soon as they are available, but in any event by the date 30 days from their being signed off, or the date on which they are required by law to be filed (whichever is the earlier) its audited financial statements (consolidated if appropriate) for that financial year;

4.6.2 if requested by the Trustee within 30 days of such request the audited financial statements of any other Subsidiary of the Chargors for that financial year.

4.7 Information

Without prejudice to Clause 4.6, the Chargors shall promptly supply to the Trustee such information as the Trustee may reasonably require about the Charged Property, compliance of the Chargors with the terms of this Deed, and any other circumstances which exist and which are reasonably likely to have a Material Detrimental Effect, provided that, where the Trademark Value is more than £750,000,000, any such requirement must relate to a matter or circumstance which is reasonably likely to have a Material Detrimental Effect.

4.8 Notification of default

Each Chargor shall notify the Trustee of the occurrence of any event which has caused the Security created by this Deed to have become enforceable (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Chargor is aware that a notification has already been provided by another Chargor).

4.9 **Merger**

If the Trademark Value is less than £750,000,000, notwithstanding Clause 4.4.2, the Chargors shall not be entitled to enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction which is reasonably likely to have a Material Detrimental Effect without the prior written consent of the Trustee.

4.10 **Change of business**

If the Trademark Value is less than £750,000,000, notwithstanding Clause 4.4.2, no Chargor shall be entitled to make any substantial change to the general nature of its business which is reasonably likely to have a Material Detrimental Effect without the prior written consent of the Trustee.

4.11 **Representations and Warranties**

4.11.1 Each Chargor makes the representations and warranties set out in this Clause 4.11 to the Trustee in respect of itself and the other Chargors:

- (a) it is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) the entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:-
 - (i) any law or regulation applicable to it;
 - (ii) the constitutional documents of any Chargor; or
 - (iii) any agreement or instrument binding upon any Chargor or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument where such conflict, default or termination is reasonably likely to have a Material Detrimental Effect;
- (d) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed;
- (e) all authorisations, consents, approvals, filings and registrations required or desirable:-
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
 - (ii) to make this Deed admissible in evidence, have been obtained or effected and are in full force and effect;
- (f) all authorisations, consents, approvals, filings and registrations necessary for the conduct of the business, trade and ordinary activities of the Chargors and their Subsidiaries have been obtained or effected and are in full force and effect;
- (g) no:-

(i) corporate action, legal proceeding or other procedure or step described in Clause 5.1.6, or

(ii) creditors' process described in Clause 5.1.7,

has been taken or, to the knowledge of the Chargor, threatened in relation to a Chargor; and none of the circumstances described in Clauses 5.1.3 to 5.1.5 applies to a Chargor.

(h) no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Detrimental Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against the Chargors.

5. DEMAND AND ENFORCEMENT

5.1 Enforcement

The Security created by this Deed shall become enforceable in the event that:-

5.1.1 Without prejudice to Clause 5.1.2 a Chargor does not pay within 15 working days of the due date any amount payable in connection with the Scheme or under a guarantee given by it in relation to the Scheme at the place at and in the currency in which it is expressed to be payable; or

5.1.2 If the Trademark Value is less than £750,000,000, a Chargor does not pay any amount payable in connection with the Scheme or under a guarantee given by it in relation to the Scheme at the place at and in the currency in which it is expressed to be payable by the date 10 working days from the due date of payment; or

5.1.3 any representation or statement made by a Chargor in this Deed is or proves to have been incorrect or misleading when made and the circumstances giving rise to such misrepresentation, if capable of remedy, are not remedied within 30 days of the earlier of (i) the relevant Chargor becoming aware of such representation or (ii) notice from the Trustee; or

5.1.4 H.J.Heinz Manufacturing UK Limited or H.J.Heinz Foods UK Limited is unable or admits inability to pay its debts as they fall due, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or

5.1.5 the value of the assets of H.J.Heinz Manufacturing UK Limited or H.J.Heinz Foods UK Limited is less than its liabilities (taking into account contingent and prospective liabilities); or

5.1.6 without prejudice to Clause 5.1.7 a moratorium is declared in respect of any indebtedness of any Chargor (and if a moratorium is declared, the ending of the moratorium will not cause the Security created by this Deed to cease to be enforceable) provided that no Event of Default shall arise under this Clause 5.1.6 unless the event or circumstances that would otherwise have given rise to an Event of Default are reasonably likely to have a Material Detrimental Effect; or

5.1.7 a moratorium is declared in respect of any indebtedness of H.J.Heinz Manufacturing UK Limited and/or H.J.Heinz Foods UK Limited (and if a moratorium is declared, the ending of the moratorium will not cause the Security created by this Deed to cease to be enforceable); or

5.1.8 any corporate action, legal proceedings or other procedure or step is taken in relation to:-

(a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of H.J.Heinz Manufacturing UK Limited and/or H.J.Heinz Foods UK Limited;

(b) a composition, compromise, assignment or arrangement with any creditor of H.J.Heinz Manufacturing UK Limited and/or H.J.Heinz Foods UK Limited;

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of H.J.Heinz Manufacturing UK Limited and/or H.J.Heinz Foods UK Limited or any of their assets,

or any analogous procedure or step in any jurisdiction (provided that Clause 5.1.8(a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised); or

5.1.9 without prejudice to Clause 5.1.8 any corporate action, legal proceedings or other procedure or step is taken in relation to:-

(a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Chargor;

(b) a composition, compromise, assignment or arrangement with any creditor of a Chargor;

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of a Chargor or any of its assets,

or any analogous procedure or step in any jurisdiction provided that Clause 5.1.9(a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised, and provided that No Event of Default shall arise under this Clause 5.1.9 unless the event or circumstances that would otherwise have given rise to an Event of Default are reasonably likely to have a Material Detrimental Effect;

5.1.10 a Chargor is in breach of Clause 4.2.2 which breach is not remedied within 30 days, or is in breach of Clause 4.3 or Clause 4.4.1;

5.1.11 the occurrence of any event causing, or purporting to cause, the floating charge created by this Deed to become fixed in relation to any Charged Property; or

5.1.12 where the Trademark Value is less than £750,000,000 any person levies or attempts to levy any distress, execution or other process against any of the

Charged Property in respect of an amount of more than £5,000,000 and such amount is not discharged within 10 Business Days of such levy or attempted levy.

5.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Trustee may (without prejudice to any other rights and remedies and without notice to the Chargor(s) do all or any of the following:-

5.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;

5.2.2 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Charged Property, without the restrictions imposed by sections 99 and 100 of the LPA;

5.2.3 to the extent that any Charged Property constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to the Trustee insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18;

5.2.4 subject to Clause 6.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of any of the Charged Property; and

5.2.5 appoint an administrator of any Chargor.

5.3 Disposal of the Charged Property

In exercising the powers referred to in Clause 5.2 (*Powers on enforcement*), the Trustee or any Receiver may sell or dispose of any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

5.4 Same rights as Receiver

Any rights conferred upon a Receiver may be exercised by the Trustee or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Trustee shall have taken possession or appointed a Receiver of Charged Property.

5.5 Delegation

The Trustee may delegate in any manner to any person any rights exercisable by the Trustee hereunder. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Trustee thinks fit.

5.6 Enforcement and preservation costs

The Chargors shall, on demand, pay to the Trustee the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted by or against the Trustee as a consequence of taking or holding the Security created by this Deed or enforcing those rights.

6. **RECEIVERS**

6.1 **Method of appointment or removal**

Every appointment or removal of a Receiver, any delegate or any other person by the Trustee under this Deed shall be in writing under the hand of any officer or manager of the Trustee.

6.2 **Removal**

The Trustee may remove any person from office in relation to any part of the Charged Property of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Charged Property) appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

6.3 **Powers**

Every Receiver shall have and be entitled to exercise all the powers:-

6.3.1 of the Trustee under this Deed;

6.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;

6.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986;

6.3.4 in relation to any Charged Property, which he would have if he were its only beneficial owner; and

6.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

6.4 **Receiver as agent**

The Receiver shall be the agent of the Chargors (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until a Chargor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Trustee.

6.5 **Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

6.6 **Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Trustee and the maximum rate specified in section 109(6) of the Act shall not apply.

7. APPLICATION OF MONIES

7.1 Application of moneys

All sums received by virtue of this Deed by the Trustee or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

7.1.1 first, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Trustee or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full to the Trustee or other person entitled to it;

7.1.2 secondly, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Trustee or any Receiver;

7.1.3 thirdly, in or towards payment of the Secured Liabilities;

7.1.4 fourthly, in the payment of the surplus (if any), to the Chargors or any other person entitled to it;

and section 109(8) of the LPA shall not apply.

8. POWER OF ATTORNEY

8.1 Appointment

Each Chargor irrevocably and by way of security appoints:-

8.1.1 the Trustee (whether or not a Receiver has been appointed);

8.1.2 any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Trustee; and

8.1.3 (as a separate appointment) each Receiver,

severally as the Chargor's attorney and attorneys with power, exercisable only after the Security created by this Deed has become enforceable in accordance with Clause 5 of this Deed, to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Chargor, which the Chargor could be required to do or execute under any provision of this Deed, or which the Trustee in its sole opinion may consider necessary or desirable for perfecting its title to any of the Charged Property or enabling the Trustee or the Receiver to exercise any of its rights or powers under this Deed.

8.2

Ratification

Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 8.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 8.1 (*Appointment*).

9. **PROTECTION OF THIRD PARTIES**

9.1 **Statutory powers**

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Trustee, as varied and extended by this Deed, and all other powers of the Trustee, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

9.2 **Purchasers**

No purchaser from or other person dealing with the Trustee, any person to whom it has delegated any of its powers, or the Receiver, shall be concerned:-

9.2.1 to enquire whether any of the powers which the Trustee or a Receiver have exercised has arisen or become exercisable;

9.2.2 to enquire whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act; or

9.2.3 as to the propriety or validity of the exercise of those powers, and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

9.3 **Receipts**

All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Trustee, any Receiver or any person to whom any of them have delegated any of their powers.

10. **PROTECTION OF THE TRUSTEE AND ANY RECEIVER**

10.1 **No liability**

None of the Trustee, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed.

10.2 **Not mortgagee in possession**

Without prejudice to any other provision of this Deed, entry into possession of any Charged Property shall not render the Trustee, any Receiver or any of their respective officers or employees liable:-

10.2.1 to account as mortgagee in possession;

10.2.2 for any loss on realisation; or

10.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Trustee or any Receiver enters into possession of any Charged Property it shall be entitled at any time it or he thinks fit to relinquish possession.

10.3 **Indemnity**

The Chargors shall indemnify and keep indemnified the Trustee, any Receiver, and their respective officers, employees and delegates, against all claims, costs, expenses and liabilities incurred by them in respect of all or any of the following:-

10.3.1 any act or omission by any of them in relation to all or any of the Charged Property;

10.3.2 any payment relating to or in respect of all or any of the Charged Property which is made at any time by any of them;

10.3.3 any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;

10.3.4 exercising or purporting to exercise or failing to exercise any of the rights, powers and discretions conferred on them or permitted under this Deed;

10.3.5 any breach by the Chargors of any of their covenants or other obligations to the Trustee,

except in the case of gross negligence or willful misconduct on the part of that person.

10.4

Interest

The Chargors shall pay interest at the Default Rate on the sums payable under this Clause 10 (*Protection of the Trustee and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

10.5

Indemnity out of the Charged Property

The Trustee, any Receiver and their respective officers, employees and delegates shall be entitled to be indemnified out of the Charged Property in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 10.3 (*Indemnity*).

10.6

Continuing protection

The provisions of this Clause 10 (*Protection of the Trustee and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

11.

PROVISIONS RELATING TO THE TRUSTEE

11.1

Powers and discretions

The rights, powers and discretions given to the Trustee in this Deed:-

11.1.1 may be exercised as often as, and in such manner as, the Trustee thinks fit;

11.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and

11.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

11.2 **Trusts**

The perpetuity period for any trusts constituted by this Deed shall be 125 years.

12. **PRESERVATION OF SECURITY**

12.1 **Continuing Security**

This Deed shall be a continuing security to the Trustee and shall remain in force until expressly discharged in writing by the Trustee notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

12.2 **Additional Security**

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Trustee may have now or at any time in the future for or in respect of any of the Secured Liabilities.

12.3 **Waiver of Defences**

Neither the Security created by this Deed nor the obligations of the Chargors under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it, the Trustee) including:-

12.3.1 any time, waiver or consent granted to, or composition with, any Chargor or other person;

12.3.2 the release of any Chargor or any other person under the terms of any composition or arrangement with any person;

12.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

12.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor or any other person;

12.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of any other document or Security;

12.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any document; or

12.3.7 an insolvency, liquidation, administration or similar procedure.

12.4 **Immediate recourse**

The Chargors waive any right they may have of first requiring the Trustee (or any trustee or agent on its behalf) to proceed against or enforce any other rights of Security or claim payment from any person before claiming from the Chargors under this Deed. This waiver applies irrespective of any law to the contrary.

12.5 **Appropriations**

Whilst any Secured Liabilities remain outstanding the Trustee may:-

12.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 7.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargors shall not be entitled to the same; and

12.5.2 hold in an interest-bearing suspense account any moneys received from the Chargors on or account of the Secured Liabilities.

12.6 Deferral of Chargors' rights

Whilst any Secured Liabilities remain outstanding and unless the Trustee otherwise directs, the Chargors shall not exercise any rights which they may have by reason of performance of their obligations under this Deed or the enforcement of the Security created by this Deed:-

12.6.1 to receive or claim payment from, or be indemnified by a Chargor;

12.6.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any obligations under this Deed;

12.6.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Trustee under this Deed;

12.6.4 to exercise any right of set-off against any Chargor; and/or

12.6.5 to claim or prove as a creditor of any Chargor in competition with the Trustee.

13. RELEASE

13.1 Release

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities the Trustee shall, or shall procure that its appointees will, at the request and cost of the Chargors:-

13.1.1 release the Charged Property from this Deed; and

13.1.2 re-assign the Charged Property that has been assigned to the Trustee under this Deed.

13.2 Reinstatement

If the Trustee considers that any amount paid or credited to the Trustee (whether in respect of the Secured Liabilities or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

13.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and

13.2.2 the liability of the Chargors and the Security created by this Deed shall continue as if that amount had not been paid or credited.

13.3 Consolidation

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

14. **MISCELLANEOUS PROVISIONS**

14.1 **Severability**

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

14.1.1 the validity or enforceability of any other provision, in any jurisdiction; or

14.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

14.2 **Amendments and variations**

This Deed shall remain in full force and effect notwithstanding any amendment, restatement, novation or supplementation of the Scheme or this Deed (including any increase in the amount of the Secured Liabilities).

14.3 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Trustee, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provide by law.

14.4 **Counterparts**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

14.5 **Contracts (Rights of Third Parties) Act 1999**

No person who is not a party to this Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

15. **COMMUNICATIONS**

15.1 **Communication to be in writing**

Any communication given or made under or in connection with the matters contemplated by this Deed shall be in writing.

15.2 **Deemed delivery**

Any such communication shall be addressed as provided in Clause 15.3 (Parties details) and, if so addressed, shall be deemed to have been duly given or made as follows:-

15.2.1 if sent by personal delivery, upon delivery at the address of the relevant party;

15.2.2 if sent by first class post, two working days after the date of posting; and

15.2.3 if sent by fax: upon receipt by the relevant party, provided that if, in accordance with the above provisions, any such communication would otherwise be deemed to be given or made outside

normal working hours, such communication shall be deemed to be given or made at the start of the next working day.

15.3 Parties' Details

The relevant details of each party for the purposes of this Deed, subject to Clause 15.4 (*Change of details*) are:-

Party	Attention	Address	Fax No.
FALL RIDGE PARTNERS LLP	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333
H.J. HEINZ COMPANY LIMITED	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333
HP FOODS LIMITED	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333
H.J. HEINZ MANUFACTURING UK LIMITED	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333
H.J. HEINZ FOODS UK LIMITED	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333
H.J. HEINZ FROZEN & CHILLED FOODS LIMITED	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333
HEINZ SINGLE SERVICE LIMITED	Ian Davies	Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT	0845 498 7333

15.4 Change of details

Any party may notify the other party at any time of a change to its details for the purposes of Clause 15.3 (*Parties' details*) provided that such notification shall only be effective on:-

- 15.4.1 the date specified in the notification as the date on which the change is to take place; or
- 15.4.2 if no date is specified or the date specified is less than 5 working days after the date on which notice is given, the date falling 5 working days after notice of any such change has been given.

16. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

17. ENFORCEMENT

17.1 Jurisdiction of English Courts

17.1.1 The courts of England have exclusive jurisdiction to settle any Dispute (including a Dispute regarding the existence, validity or termination of this Deed and any non-contractual obligations arising out of or in connection with this Deed) (a "Dispute").

17.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

17.2 The Chargors expressly agree and consent to the provisions of this Clause 17 (*Enforcement*) and Clause 16 (*Governing Law*).

EXECUTED AS A DEED and delivered on the date appearing at the beginning of this Deed.

SCHEDULE 1
THE CHARGORS AND THEIR REGISTERED OFFICES

Company name	Registration number	Address
FALL RIDGE PARTNERS LLP	OC380416	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL
H.J. HEINZ COMPANY LIMITED	08311505	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL
HP FOODS LIMITED	02251694	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL
H.J. HEINZ MANUFACTURING UK LIMITED	00147624	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL
H.J. HEINZ FOODS UK LIMITED	08322668	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL
H.J. HEINZ FROZEN & CHILLED FOODS LIMITED	02207650	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL
HEINZ SINGLE SERVICE LIMITED	01749058	South Building, Hayes Park, Hayes, Middlesex, UB4 8AL

SCHEDULE 2

[To be typed on H.J. Heinz Company headed notepaper]

[Date]

Value of intellectual property and trademarks per US audited accounts dated []

£ \$

Value attributed to the Trademarks in the Heinz UK Business Unit

£ \$

Value of intellectual property and trademarks attributed to companies not in the UK Business Unit

£ \$

Total

£ \$

.....

Director

For and on behalf of H.J. Heinz Company

The Chargors

EXECUTED as a deed by
FALL RIDGE PARTNERS LLP
acting by

duly authorised by
H.J. HEINZ GLOBAL HOLDING B.V.
to sign on its behalf
as designated member of
FALL RIDGE PARTNERS LLP

and

acting by

duly authorised by
HEINZ EUROPE UNLIMITED
to sign on its behalf
as designated member of
FALL RIDGE PARTNERS LLP

EXECUTED as a Deed
by **H.J. HEINZ COMPANY LIMITED**
acting by one Director

in the presence of:

Witness signature:

Witness name: *Nazira Nazari*

Witness address:

*South Building, Noyce Park,
Noyce, Midlesex, UB9 8AL*

Signature of officer of **H.J. HEINZ GLOBAL HOLDING B.V.**

Signature of officer of **HEINZ EUROPE UNLIMITED**

Director

**EXECUTED as a Deed
by H.J. HEINZ FOODS UK LIMITED
acting by one Director**

Director

In the presence of:

Witness signature:

Witness name:

Witness address:

**EXECUTED as a Deed
by H.J. HEINZ FROZEN & CHILLED
FOODS LIMITED
acting by one Director**

Director

In the presence of:

Witness signature:

Witness name: *Margie Barrett*

Witness address:

*Swift Building, Hayes Road, Hayes, Middlesex
UB4 8AL*

EXECUTED as a Deed
by HEINZ SINGLE SERVICE
LIMITED acting by one Director

)
)
)
)
)
Director

In the presence of:

Witness signature:

Witness name:

Witness address:

EXECUTED
AS A DEED by
H.J. HEINZ TRUST LIMITED
as trustee of the Heinz Management Plan
acting by two Directors/a Director
and the Secretary

)
)
)
Director
Director/Secretary

[Redacted signature area]