

# M

COMPANIES FORM No. 395

## Particulars of a mortgage or charge

# 395

Please do not  
write in  
this margin

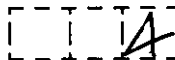
Pursuant to section 395 of the Companies Act 1985

Please complete  
legibly, preferably  
in black type, or  
bold block lettering\* insert full name  
of company

To the Registrar of Companies

For official use

Company number



2778084

Name of company

\* XPEDITE SYSTEMS LIMITED (the "Company")

Date of creation of the charge

17th December 1997

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

FIXED AND FLOATING CHARGE (the "Charge")

Amount secured by the mortgage or charge

The sum of one pound (£1) and all of the Liabilities, together with interest under the Charge accruing due to the Security Agent, on a daily basis from day to day from first demand upon the Company until actual payment (as well after as before any further demand or judgment or the liquidation of the Company).

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

The Bank of New York (the "Security Agent"), One Wall Street, New York,  
NY 10286, USA

Postcode

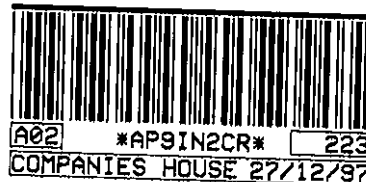
Presentor's name address and  
reference (if any):

Herbert Smith  
Exchange House  
Primrose Street  
London EC2A 2HS  
321/C263/30718868

Time critical reference

For official Use  
Mortgage Section

Post room



Short particulars of all the property mortgaged or charged

Please see attached continuation sheet.

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 Herbert Smith

Date 23 December 1997

On behalf of ~~[company]~~ [mortgagee/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.

CONTINUATION SHEET FOR  
SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED

Name of Company: **XPEDITE SYSTEMS LIMITED**

Company Number: **2778084**

**Continuation Sheet 1**

Under the Charge, the Company has with full title guarantee and to the intent that the security created shall rank as a continuing security for discharge of the Liabilities:

- (1) charged to the Security Agent by way of legal mortgage ALL THAT the Mortgaged Property;
- (2) assigned absolutely and agreed to assign absolutely to the Security Agent (subject to re-assignment on discharge of the Liabilities):
  - (A) all rights and claims to which the Company was at the date of the Charge or may thereafter become entitled in relation to the Mortgaged Property;
  - (B) the benefit of all the Company's interest in any policies of insurance relating to the Mortgaged Property whether relating to buildings thereon or loss of rent or otherwise;
- (3) charged to the Security Agent by way of specific equitable charge all estates or interests in any freehold or leasehold property (except the Mortgaged Property) at the date of the Charge or at any time during the subsistence of the Charge belonging to or charged to the Company (the "**Charged Property**");
- (4) charged specifically to the Security Agent by way of first fixed charge all stocks, shares and other securities now or at any time during the subsistence of the Charge belonging to or beneficially owned by the Company, including those issued by any company which is for the time being the Company's subsidiary (as defined in section 736 of the Companies Act 1985);
- (5) charged specifically to the Security Agent by way of first fixed charge the Scheduled Property;
- (6) charged specifically to the Security Agent by way of first fixed charge all book debts and other debts at the date of the Charge and from time to time due or owing to the Company (other than any debt comprised in the Scheduled Property) including, for the avoidance of doubt, (and with the intent that the same shall be the subject of specific fixed charges) all and any proceeds of sale of items comprised within the Mortgaged Property, the Charged Property and/or the Scheduled Property and all balances at the Banks (or any of them) whether held in a current or other account;
- (7) charged to the Security Agent by way of fixed charge its goodwill (present and future); and
- (8) charged to the Security Agent by way of first floating charge its Undertaking.

**CONTINUATION SHEET FOR**  
**SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED**

Name of Company: **XPEDITE SYSTEMS LIMITED**

Company Number: **2778084**

**Continuation Sheet 2**

**Negative Pledge**

- (1) The Company will not secure or suffer any of its Indebtedness to be secured by any Security on its interests in or under any or all of its Undertaking other than in favour of the Security Agent or as permitted under the Credit Agreement.
- (2) The Company shall procure that any debenture, mortgage or charge created by the Company after the date of the Charge (otherwise than in favour of the Security Agent) shall be expressed to be subject to the Charge.

**Definitions**

<b>"Banks"</b>	means The Bank of New York and Nationsbank, N.A. and any person (other than Xpedite Systems, Inc., Xpedite Systems Holdings (UK) Limited or any of their affiliates) that has been assigned any or all of the rights or obligations of a Bank pursuant to Section 10.10(a) of the Credit Agreement;
<b>"Charge"</b>	means the Fixed and Floating Charge dated 17th December 1997 and created by the Company in favour of the Security Agent;
<b>"Company"</b>	means Xpedite Systems Limited;
<b>"Credit Agreement"</b>	means the \$150,000,000 Credit Agreement dated on or about the date of the Charge amongst Xpedite Systems, Inc., Xpedite Systems Holdings (UK) Limited, the Guarantors, Banks, Documentation Agent and Administrative Agent described therein;
<b>"Indebtedness"</b>	means any obligation for the payment or repayment of money, whether present or future, actual or contingent and whether incurred as principal or as surety (including, without limitation, any obligation to pay any interest both before demand and from the date of demand to the date of payment, as well after as before judgment or decree (whether any of the same shall have been capitalised or not but without double counting) and all costs, charges, fees,

**CONTINUATION SHEET FOR**  
**SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED**

Name of Company: **XPEDITE SYSTEMS LIMITED**  
Company Number: **2778084**

**Continuation Sheet 3**

commissions, legal and other expenses, liabilities and obligations whether due or owing or incurred in any manner whatsoever on a full indemnity basis unless otherwise provided for in the Loan Documents);

**"Liabilities"**

means all Indebtedness (in whatever currency it may be expressed) of the Company to any of the Banks (whether incurred solely, severally or jointly with others and whether incurred as principal or surety) under each or any of the Loan Documents;

**"Loan Documents"**

means (i) the Credit Agreement, any promissory notes in the form of Exhibit A to the Credit Agreement, the security agreement between Xpedite Systems Worldwide, Inc. and The Bank of New York, the security agreement between Xpedite Systems, Inc. and The Bank of New York, any other security agreement entered into by a subsidiary of Xpedite Systems, Inc. and The Bank of New York pursuant to Section 4.03 of the Credit Agreement and substantially in the form set out in Exhibit B to the Credit Agreement, the Charge, the fixed and floating charge between Xpedite Systems Holdings (UK) Limited and The Bank of New York, the deed of charge over shares and securities between Xpedite Systems Worldwide, Inc. and The Bank of New York, any other security agreement entered into by a subsidiary of Xpedite Systems Holdings (UK) Limited and The Bank of New York pursuant to Section 4.03 of the Credit Agreement and substantially in the form set out in Exhibit E to the Credit Agreement and (ii) all other agreements, documents and instruments executed or delivered under or in connection with any agreement, document or instrument referred to in clause (i) of this definition, any other agreement, document or instrument referred to in this clause (ii) of this definition or any of the transactions contemplated by any agreement, document or instrument referred to in clauses (i) or (ii) of this definition (other than the acquisitions of the Company and Xpedite Systems, GmbH);

**CONTINUATION SHEET FOR**  
**SHORT PARTICULARS OF ALL THE PROPERTY MORTGAGED OR CHARGED**

Name of Company: **XPEDITE SYSTEMS LIMITED**

Company Number: **2778084**

**Continuation Sheet 4**

**"Mortgaged Property"**

means:

1. the leasehold interest in Units 1 and 2, Clifton Moor Business Village, York being the subject of a lease dated 14 May 1993 made between (1) JT Norbury and LM Norbury and (2) Xpedite Systems Limited for a term of 6 years;
2. the freehold interest in Unit 3, Pioneer Business Park, Amy Johnson Way, Clifton Moor, York registered at H.M. Land Registry under title number NYK 189949;
3. an interest in an agreement to lease in respect of property located at 33 Lombard Street, London,

together with all fixed plant and machinery and fixtures thereto and all and any proceeds of sale of all or any part thereof and the benefit of any covenants for title given or entered into by any predecessor in title together with any moneys payable in respect of such covenants;

**"Scheduled Property"**

means all that property as is described in Schedule 2 to the Charge which property may include, but shall not be limited to, patents and specified debts;

**"Security"**

means any mortgage, charge, pledge, lien, assignment created for the purpose of security, hypothecation, encumbrance or other security interest or preferential arrangement of any kind or other agreement which has the same or similar effect to any of the foregoing;

**"Security Agent"**

means The Bank of New York; and

**"Undertaking"**

means the property, assets, rights and revenues of the Company, whatsoever and wheresoever, present and future, including its uncalled share capital (if any) or such of them as the context requires.

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

COMPANY No. 02778084

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A FIXED AND FLOATING CHARGE DATED THE 17th DECEMBER 1997 AND CREATED BY XPEDITE SYSTEMS LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE BANK OF NEW YORK (THE "SECURITY AGENT") WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 27th DECEMBER 1997.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 2nd JANUARY 1998.

*Peter C Protheroe*

for the Registrar of Companies



C O M P A N I E S   H O U S E