



**Registration of a Charge**

Company name: **AIRWAIR (1994) LIMITED**

Company number: **02874123**



X96AQUWO

Received for Electronic Filing: **01/06/2020**

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**Details of Charge**

Date of creation: **29/05/2020**

Charge code: **0287 4123 0012**

Persons entitled: **BARCLAYS BANK PLC (AND ITS SUCCESSORS IN TITLE AND PERMITTED TRANSFEREES)**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**LINKLATERS LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 2874123

Charge code: 0287 4123 0012

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th May 2020 and created by AIRWAIR (1994) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st June 2020 .

Given at Companies House, Cardiff on 2nd June 2020

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

29 May

2020

**AIRWAIR (1994) LIMITED**  
acting as the Chargor

**BARCLAYS BANK PLC**  
acting as the Security Trustee

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**SUPPLEMENTAL SHARE CHARGE**

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## CONTENTS

CLAUSE	PAGE
1. INTERPRETATION.....	1
2. CONFIRMATION OF SECURITY .....	4
3. CREATION OF SECURITY.....	4
4. REPRESENTATIONS .....	4
5. SHARES .....	5
6. FILINGS AND REGISTRATIONS .....	7
7. ADDITIONAL UNDERTAKINGS .....	7
8. POWER TO REMEDY .....	8
9. ENFORCEMENT OF SECURITY .....	8
10. RECEIVER.....	10
11. DELEGATION.....	12
12. PRESERVATION OF SECURITY .....	13
13. FURTHER ASSURANCES .....	15
14. POWER OF ATTORNEY.....	15
15. APPLICATION OF PROCEEDS.....	16
16. MISCELLANEOUS .....	16
17. PARTIAL INVALIDITY .....	17
18. CHANGES TO PARTIES .....	17
19. NOTICES.....	17
20. RELEASE.....	17
21. GOVERNING LAW AND JURISDICTION .....	18
SCHEDULE 1 SECURITY ASSETS.....	20

THIS DEED is made on 29 May 2020

BETWEEN:

- (1) **AIRWAIR (1994) LIMITED**, a company incorporated under the laws of England and Wales with registration number 02874123 and registered office at Cobbs Lane, Wollaston, Nr Wellingborough, Northamptonshire, NN29 7SW (the *Chargor*); and
- (2) **BARCLAYS BANK PLC**, a company incorporated in England and Wales with limited liability, for itself and as agent and trustee for each of the Secured Parties (as defined below) (the *Security Trustee*).

WHEREAS:

- (A) The Chargor is required to enter into this Deed as a condition of the Finance Documents.
- (B) This Deed confirms and is supplemental to the Original Security and the Confirmatory Security and, to the extent there is any doubt as to whether the Security Interests created by the Original Security or the Confirmatory Security, secures all of the Secured Obligations, the Chargor agrees to create the new Security Interests as set out in Clause 3 (*Creation of Security*) below.
- (C) It is intended that this document takes effect as a deed, notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

## 1. INTERPRETATION

### 1.1 Definitions

In this Deed:

***Amendment and Restatement Agreement*** means the amendment and restatement agreement in respect of the Senior Facilities Agreement between, among others, Doc Midco Limited, Doc Bidco Limited and the Security Trustee dated on or about the date of this Deed.

***Companies Ordinance*** means the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

***Company*** means Dr. Martens Airwair Hong Kong Limited, a company incorporated under the laws of Hong Kong with registration number 0638004.

***Confirmatory Security*** means the confirmatory share charge dated 20 August 2019 between the Chargor and the Security Trustee.

***Conveyancing and Property Ordinance*** means the Conveyancing and Property Ordinance (Chapter 219 of the Laws of Hong Kong).

***Discharge Date*** has the meaning given to the term “Senior Discharge Date” in the Intercreditor Agreement.

***Effective Date*** has the meaning given to it in the Amendment and Restatement Agreement.

**Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.

**Original Security** means the share charge dated 21 February 2014 between the Chargor and the Security Trustee.

**Party** means a party to this Deed.

**Receiver** means a receiver (whether appointed pursuant to this Deed or any statute, by a court or otherwise) of all or any of the Security Assets.

**Secured Obligations** has the meaning given to the term "Secured Obligations" in the Intercreditor Agreement, including, on and after the Effective Date, those obligations and liabilities under the Senior Facilities Agreement.

**Security** means any Security Interest created under or pursuant to this Deed.

**Security Assets** means all the assets and undertaking of the Chargor from time to time charged (or expressed to be charged) pursuant to this Deed.

**Security Interest** has the meaning given to the term "Security" in the Senior Facilities Agreement.

**Senior Facilities Agreement** means the senior facilities agreement dated 23 October 2013, as amended and restated on 20 August 2019, and amended and restated on or about the date of this Deed pursuant to the Amendment and Restatement Agreement between, among others, Doc Midco Limited, Doc Bidco Limited and the Security Trustee.

**Shares** means:

- (a) in relation to the Chargor, the shares in the Company owned legally or beneficially by it or any nominee on its behalf or held by the Security Trustee or any nominee on its behalf (including the shares identified in Schedule 1 (Security Assets) (if any));
- (b) all rights relating to any of those shares which are deposited with or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including any rights against any such person); and
- (c) all warrants, options and other rights to subscribe for, purchase or otherwise acquire any of those shares, in each case now or in the future owned by it or (to the extent of its interest) in which it now or in the future has an interest.

## **1.2 Construction**

- (a) Words and expressions defined in the Senior Facilities Agreement have the same meanings when used in this Deed unless otherwise provided or the context otherwise requires.
- (b) The provisions of clause 1.2 (*Construction*) of the Senior Facilities Agreement shall apply to this Deed as if set out in full with references to "this Agreement" being treated as references to this Deed.
- (c) A reference in this Deed to any shares includes:

- (i) all dividends, interest, coupons and other distributions paid or payable;
- (ii) all stocks, shares, securities, rights, moneys, allotments, benefits and other assets accruing or offered at any time by way of redemption, substitution, conversion, exchange, bonus or preference, under option rights or otherwise; and
- (iii) any rights against any clearance system and any right under any custodian or other agreement,

in relation to those shares.

### **1.3 Conflicts**

Each Party acknowledges and agrees that in the event of a conflict between the terms of this Deed and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail and in the event of a conflict between the terms of this Deed and the Senior Facilities Agreement, the terms of the Senior Facilities Agreement shall prevail.

### **1.4 Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) (the *Third Parties Ordinance*) to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver, delegate appointed by the Security Trustee under this Deed or any person described in Clause 16.2 (*Security Trustee's liability*) may, subject to this Clause 1.4 and the Third Parties Ordinance, rely on any Clause of this Deed which expressly confers rights on it.

### **1.5 Provisions relating to Security**

- (a) All Security:
  - (i) is created in favour of the Security Trustee;
  - (ii) is created over present and future assets of the Chargor;
  - (iii) is continuing security for the payment, discharge and performance of all the Secured Obligations and will extend to the ultimate balance of all sums payable under the Finance Documents regardless of any intermediate payment or discharge in whole or in part; and
  - (iv) is created in addition to, and affects neither the security created by the Original Security nor the security created by the Confirmatory Security.
- (b) The Security Trustee holds the benefit of this Deed on trust for the Secured Parties from time to time.



- (c) The fact that the details of any assets in Schedule 1 (*Security Assets*) are incorrect or incomplete shall not affect the validity or enforceability of this Deed in respect of the assets of the Chargor.
- (d) Any restriction on the power of sale or the right of a mortgagee to consolidate mortgages conferred by law does not apply to this Deed.
- (e) Where this Deed purports to create a first fixed or floating Security Interest, that Security Interest will be a junior ranking Security Interest subject to the equivalent Security Interest created by the Original Security and Confirmatory Security until such time as the Security Interest created by the Original Security and/or the Confirmatory Security ceases to have effect.

## **2. CONFIRMATION OF SECURITY**

On the Effective Date, notwithstanding the creation of any new Security Interest pursuant to this Deed, the Chargor confirms that the Security Interests created under the Original Security and the Confirmatory Security shall continue to secure payment and discharge of the Secured Obligations and such Security Interests shall continue in full force and effect.

## **3. CREATION OF SECURITY**

### **3.1 Fixed charge**

Subject to the terms of the Original Security, the Chargor as legal and beneficial owner and as continuing security for the payment, discharge and performance of all the Secured Obligations at any time owed or due to the Secured Parties (or any of them) charges and agrees to charge in favour of the Security Trustee by way of first fixed charge all its rights, title and interest from time to time in and to the Shares.

## **4. REPRESENTATIONS**

### **4.1 Representations and warranties**

The Chargor represents and warrants to each Secured Party that:

- (a) it is duly incorporated and validly existing under the law of its jurisdiction of incorporation or organisation;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) subject to the Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations;
- (d) the entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Transaction Security pursuant to this Deed do not and will not conflict with:
  - (i) any law or regulation applicable to it in any material respect;
  - (ii) its constitutional documents in any material respect; or

- (iii) any agreement or instrument binding upon it to an extent which has, or would be reasonably be expected to have, a Material Adverse Effect;
- (e) 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 and the transactions contemplated hereby;
- (f) no limit on its powers will be exceeded as a result of the grant of security under this Deed;
- (g) it is the absolute legal and beneficial owner of the Shares, which are free from any Security or Quasi-Security other than the Security created under this Deed and the Original Security and the Confirmatory Security.
- (h) all of the Shares are fully paid;
- (i) it is not registered under Part 16 of the Companies Ordinance; and
- (j) its entry into this Deed does not cause any infringement of sections 205 to 207, 274, 275, 277 to 282 and 286 to 289 (inclusive) of the Companies Ordinance.

#### **4.2 Time for making representations and warranties**

The representations and warranties set out in this Deed are:

- (a) made by the Chargor on the date of this Deed; and
- (b) deemed to be repeated by the Chargor on each date prior to the Discharge Date on which any of the representations and warranties set out in clause 24 (*Representations*) of the Senior Facilities Agreement are repeated,

by reference to the circumstances existing at that time.

### **5. SHARES**

#### **5.1 Voting and other rights**

- (a) Until the occurrence of a Declared Default, all voting rights attaching to the Shares may be exercised by the Chargor in its sole discretion provided that it does so for a purpose not inconsistent with any Finance Document or where the Shares have been registered in the name of the Security Trustee or its nominee, as the Chargor may direct in writing, and the Security Trustee and any of its nominees in whose name such Shares are registered shall execute any form of proxy or other document reasonably required in order for the Chargor to do so.
- (b) On and after the occurrence of a Declared Default, the Security Trustee (or its nominee) may exercise (or refrain from exercising) any voting rights, powers and other rights in respect of any Shares owned by the Chargor as it sees fit and without any further consent or authority on the part of the Chargor.

#### **5.2 Dividends and other distributions**

- (a) Until the occurrence of a Declared Default, all dividends and other distributions paid or payable in respect of the Security Assets may be paid directly to the Chargor free

from the security created under Clause 4 (*Creation of Security*) and, if paid directly to the Security Trustee, shall be paid promptly by it to the Chargor.

- (b) After the occurrence of a Declared Default, all dividends and other distributions paid or payable in respect of the Security Assets (notwithstanding that they may have accrued in respect of an earlier period):
  - (i) if received by the Chargor (or any of its nominees), shall be held on trust by the relevant recipient and shall forthwith be paid and transferred to the Security Trustee; and
  - (ii) when and if received by the Security Trustee (or any of its nominee), shall form part of the Security Assets and be held by the Security Trustee on the terms of this Deed as additional security (and, if cash, be paid into an interest-bearing cash collateral deposit account and may be applied by the Security Trustee at any time and from time to time thereafter in or towards the discharge of the Secured Obligations in accordance with clause 16 (*Application of Proceeds*) of the Intercreditor Agreement).

### **5.3 Notices and correspondence**

- (a) If the Shares have not been registered in the name of the Security Trustee or its nominee, the Chargor shall use its reasonable endeavours to forward to the Security Trustee all material written notices, correspondence and/or other communications it receives in relation to the Security Assets.
- (b) If the Shares have been registered in the name of the Security Trustee or its nominee, until the occurrence of a Declared Default, the Security Trustee (or its nominee) shall use its reasonable endeavours to forward to the Chargor all notices, correspondence and/or other communications it receives in relation to the Security Assets.

### **5.4 Payments on the Shares**

The Chargor shall make all payments that may become due in respect of any of the Shares and in the event of any default by the Chargor in making any such payment when due the Security Trustee may, if it reasonably thinks fit, make such payment on behalf of the Chargor. Any sums so paid by the Security Trustee shall be repayable by the Chargor to the Security Trustee on demand, and pending such repayment shall bear interest at the same rate and as the same terms as amounts due but unpaid under the Senior Facilities Agreement and shall constitute part of the Secured Obligations.

### **5.5 Liability to perform**

- (a) The Chargor shall remain liable to observe and perform all of the conditions and obligations assumed by it in respect of the Shares and none of the Secured Parties shall be under any obligation or liability by reason of or arising out of the Security constituted by this Deed.
- (b) None of the Secured Parties shall be required in any manner to perform or fulfil any obligation of the Chargor in respect of the Security Assets, or to make any payment, or to receive any enquiry as to the nature or sufficiency of any payment received by them, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which they may have been or to which it may be entitled

under this Deed at any time or times or exercise any rights to which the Chargor may be entitled.

## **5.6 Delivery of documents – documents of title and transfer**

The Chargor shall, use commercially reasonable endeavours upon (i) the execution of this Deed, or (ii) if later, upon becoming entitled to the Shares, to as soon as reasonably practicable:

- (a) deposit with the Security Trustee or as the Security Trustee may direct (or procure the deposit of) all bearer instruments, share certificates or other documents of title or evidence of ownership to the Shares; and
- (b) execute and deliver to the Security Trustee (and, if required to be stamped, pre-stamped) instruments of transfer executed in blank and such other documents relating to its Shares as the Security Trustee reasonably requires.

The Chargor shall be deemed in to be in compliance with this Clause 5.6 if it has complied with its obligations under clause 3.2 (*Title documents and documentation supporting security*) of the Original Security.

## **5.7 Perfection of title**

The Chargor shall, after a Declared Default, promptly execute and sign any other transfers, contract notes, powers of attorney or other documents which the Security Trustee may reasonably require:

- (a) for perfecting its title or the title of any purchaser (under the powers of realisation conferred by this Deed and/or applicable law) to any of the Security Assets; or
- (b) for vesting title to any of the Security Assets in the Security Trustee or its nominee or in any purchaser (under the powers of realisation conferred by this Deed and/or applicable law).

## **6. FILINGS AND REGISTRATIONS**

- (a) The Chargor shall ensure that details of the Security created by this Deed are duly filed with the Companies House in England and Wales within 21 days after the execution of this Deed.

## **7. ADDITIONAL UNDERTAKINGS**

### **7.1 Authorisations**

Subject to the Reservations and the Perfection Requirements, the Chargor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any material Authorisation required under any applicable law to:

- (a) enable it to perform its obligations under this Deed; and
- (b) ensure the legality, validity, enforceability or admissibility in evidence of this Deed in Hong Kong.

## **7.2 Restriction on dealings**

The Chargor shall not:

- (a) create or permit to subsist any security or Quasi-Security on any of the Security Assets; or
- (b) either in a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, sell, lease, transfer or otherwise dispose of all or part of the Security Assets (or any interest therein),

other than as permitted under the Finance Documents.

## **7.3 Part 16 of the Companies Ordinance**

The Chargor shall notify the Security Trustee in writing in advance of any plan to register under Part 16 of the Companies Ordinance and shall ensure that details of the security created by this Deed are duly registered with the Companies Registry in Hong Kong within the prescribed period of time under the Companies Ordinance, after the Chargor is so registered under Part 16 of the Companies Ordinance.

## **8. POWER TO REMEDY**

- (a) If the Chargor fails to comply with any of its obligations in relation to any Security Asset and to take all reasonable steps to comply with such obligations within ten Business Days of being notified of that failure and being requested to comply, or after a Declared Default has occurred, the Security Trustee shall have the power but shall not be obliged, on behalf of or in the name of the Chargor or otherwise, to perform the obligation and to take any steps which the Security Trustee may, in its absolute discretion, consider appropriate with a view to remedying or mitigating the consequences of the failure, but so that the exercise of this power, or the failure to exercise it, shall in no circumstances prejudice the Security Trustee's rights under this Deed.
- (b) The Chargor will indemnify and keep the Security Trustee indemnified against all losses, costs, charges and expenses incurred in connection with the exercise of the powers contained in this Clause 8 except to the extent such losses, charges or expenses are the sole direct result of the Security Trustee's gross negligence, fraud or wilful misconduct.

## **9. ENFORCEMENT OF SECURITY**

### **9.1 Timing and manner of enforcement**

- (a) The Security shall become enforceable and the powers referred to in this Deed shall become exercisable following the occurrence of a Declared Default or on the appointment of a Receiver.
- (b) After the Security has become enforceable, the Security Trustee may in its absolute discretion enforce all or any part of the Security in any manner it sees fit or as the Majority Lenders direct.

- (c) No Secured Party shall be liable to the Chargor for any loss arising from the manner in which the Security Trustee or any other Secured Party enforces or refrains from enforcing the Security.

## **9.2 Contingencies**

If the Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Security Trustee (or a Receiver) may pay the proceeds of any recoveries effected by it into such number of suspense accounts as it considers appropriate.

## **9.3 Exercise of powers**

All or any of the powers conferred on mortgagees under applicable law as varied or extended by this Deed and all or any of the rights and powers conferred by this Deed on a Receiver (whether express or implied) may be exercised by the Security Trustee without further notice to the Chargor at any time after a Declared Default has occurred, irrespective of whether the Security Trustee has taken possession of the Security Assets or appointed a Receiver.

## **9.4 Protection of third parties**

- (a) No person (including a purchaser) dealing with the Security Trustee or a Receiver or any of its respective agents will be concerned to enquire:
  - (i) whether the Secured Obligations have become payable;
  - (ii) whether any power which the Security Trustee or that Receiver may purport to exercise has become exercisable or is being properly exercised;
  - (iii) whether any amount remains due under the Finance Documents; or
  - (iv) how any money paid to the Security Trustee or to that Receiver is to be applied.
- (b) The receipt by the Security Trustee or any Receiver shall be an absolute and conclusive discharge and shall relieve any person dealing with the Security Trustee or that Receiver of any obligation to see to the application of any moneys paid to or by the direction of the Security Trustee or any Receiver.

## **9.5 No liability as mortgagee in possession**

Neither the Security Trustee nor any Receiver will be liable by reason of entering into possession of a Security Asset:

- (a) to account as mortgagee in possession for any loss on realisation in respect of such Security Asset; or
- (b) for any default or omission for which a mortgagee in possession might be liable.

## **9.6 Redemption of Security Interests**

The Security Trustee or any Receiver may at any time after a Declared Default has occurred redeem any prior Security Interest on or relating to any of the Security Assets and/or procure the transfer of that Security Interest to itself, and may settle and/or pass the accounts of any

person entitled to that Security Interest. Any account so settled and/or passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will immediately on demand pay to the Security Trustee all principal monies and interest and all losses incidental to any such redemption or transfer.

## 9.7 Retention of Security

If the Security Trustee reasonably considers, on the basis of independent legal advice, that any amount paid to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of (or any other analogous or equivalent process affecting) the payer or otherwise, then the Security and the liability of the Chargor under this Deed shall continue and that amount will not be considered to have been irrevocably paid for the purposes of this Deed.

## 10. RECEIVER

### 10.1 Appointment of Receivers

- (a) The Security Trustee may (without notice) by deed or otherwise in writing signed by any of its officers or managers or any person authorised by it for this purpose, appoint one or more qualified persons to be a Receiver:
  - (i) if requested by the Chargor in writing;
  - (ii) upon the occurrence of a Declared Default (whether or not the Security Trustee has taken possession of the Security Assets); or
  - (iii) on the taking of any corporate action, legal proceeding or other procedure referred to in clause 28.7 (*Insolvency proceedings*) of the Senior Facilities Agreement.
- (b) In this Clause 10.1, a **qualified person** means a person who, under applicable laws (including Part VI of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32 of the Laws of Hong Kong)), is qualified to act as a Receiver of the property of any company with respect to which he is appointed.
- (c) The provisions of sections 50 and 51 of the Conveyancing and Property Ordinance (as varied and extended by this Deed) shall apply to a Receiver so appointed.
- (d) Paragraph 11 of the Fourth Schedule to the Conveyancing and Property Ordinance shall not apply to this Deed or the Security.
- (e) If the Security Trustee appoints more than one person as Receiver, it may give those persons power to act either jointly or severally.
- (f) Any Receiver may be appointed Receiver of all of the Security Assets or Receiver of a part of the Security Assets specified in the appointment. In the case of an appointment of a part of the Security Assets, the rights conferred on a Receiver as set out in Clause 10.5 (*Powers of Receivers*) shall have effect as though every reference in that Clause to any Security Assets were a reference to the part of those assets so specified or any part of those assets.

## **10.2 Removal of Receivers**

The Security Trustee may by notice in writing remove any Receiver appointed by it whenever it thinks fit and appoint a new Receiver instead of any Receiver whose appointment has terminated for any reason.

## **10.3 Agent of Chargor**

- (a) Any Receiver shall be the agent of the Chargor for all purposes.
- (b) Subject to the Companies Ordinance and any other applicable law, the Chargor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver. No Secured Party will incur any liability (either to the Chargor or any other person) by reason of the appointment of a Receiver or for any other reason.

## **10.4 Remuneration**

Subject to any mandatory provisions of applicable laws which require otherwise, the Security Trustee may determine the remuneration of any Receiver appointed by it.

## **10.5 Powers of Receivers**

Any Receiver appointed pursuant to Clause 10.1 (*Appointment of Receivers*) shall have the following rights, powers and discretions (in addition to those conferred by applicable law):

- (a) to take immediate possession of, get in and collect any Security Assets or any part of the Security Assets whether accrued before or after the date of his appointment;
- (b) to raise and borrow money either unsecured or on the security of any Security Asset either in priority to the Security or otherwise and generally on any terms and for whatever purpose which he thinks fit;
- (c) to sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner, and on any terms which he thinks fit and for a consideration of any kind which he thinks fit (which may be payable in a lump sum or by instalments spread over any period);
- (d) to lend money or advance credit to any customer of the Chargor;
- (e) to settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset;
- (f) to bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he reasonably thinks fit;
- (g) to give a valid receipt for any moneys and execute any assurance or thing which may be proper for realising any Security Asset;
- (h) to delegate his powers in accordance with this Deed;



- (i) to effect any insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset in each case as he thinks fit;
- (j) to discharge any person appointed by the Chargor as he thinks fit;
- (k) to do all other acts and things which he may reasonably consider necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- (l) to exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset;
- (m) to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which the Chargor is a party;
- (n) to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Chargor and to receive dividends, and to accede to trust deeds for the creditors of any such person;
- (o) to present or defend a petition for the winding up of the Chargor and
- (p) to use the name of the Chargor for any of the above purposes,

and if there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

#### **10.6 Rights of Security Trustee**

- (a) To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after the Security becomes enforceable be exercised by the Security Trustee in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.
- (b) Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by law on mortgagees and receivers duly appointed under any law.

#### **11. DELEGATION**

- (a) The Security Trustee or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) which the Security Trustee or Receiver may reasonably think fit.
- (b) Neither the Security Trustee nor any Receiver will be in any way liable or responsible to the Chargor or any other person for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate.

- (c) References in this Deed to the Security Trustee or a Receiver shall be deemed to include references to any delegate of the Security Trustee or Receiver appointed in accordance with this Clause 11.

## **12. PRESERVATION OF SECURITY**

### **12.1 Reinstatement**

- (a) If any payment by the Chargor or any discharge or release given by a Secured Party (whether in respect of the obligations of any person or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
  - (i) the liability of the Chargor and the relevant security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and
  - (ii) the relevant Secured Party shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.
- (b) The Security Trustee may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### **12.2 Waiver of defences**

Neither the obligations of the Chargor under this Deed nor the Security will be affected by any act, omission, matter or thing (whether or not known to the Chargor or any Secured Party) which, but for this provision, would reduce, release, prejudice or provide a defence to any of those obligations including:

- (a) any time, waiver, release or consent granted to, or composition with, the Chargor or any other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor or any 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 such rights or security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) any amendment (however fundamental and including any amendment that may increase the liability of an Obligor) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

### **12.3 Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from or enforcing against the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **12.4 Appropriations**

At any time while an Event of Default is continuing or if a Declared Default has occurred, and until all the Secured Obligations have been irrevocably paid in full, each Secured Party (or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in a suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

### **12.5 Deferral of rights**

Until all the Secured Obligations have been irrevocably paid in full or the Security Trustee otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance (or a claim for performance) by it of its obligations under the Finance Documents:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any guarantor of any Obligor's obligations under the Finance Documents; or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party.

### **12.6 Security held by Chargor**

The Chargor shall not, without the prior consent of the Security Trustee, hold or otherwise take the benefit of any Security Interest from any other Obligor in respect of the Chargor's liability under this Deed. The Chargor will hold any Security Interest held by it in breach of this provision on trust for the Security Trustee.

### **12.7 Additional security/non-merger**

The Security is in addition to and shall not be merged into or in any way excluded or prejudiced by any other Security Interest now or hereafter held by or on behalf of any Secured Party in respect of the Secured Obligations or any other amount due by the Chargor to any Secured Party.

## **12.8 Power of consolidation**

Each Secured Party shall, so far as it is lawful, be entitled to consolidate the Security with any other Security Interest whether now in existence or hereafter created.

## **12.9 New accounts and ruling off**

- (a) Any Secured Party may open a new account in the name of the Chargor at any time after a subsequent Security Interest affects any Security Asset. If a Secured Party does not open a new account in such circumstances it will nevertheless be deemed to have done so upon the occurrence of such circumstances.
- (b) No moneys paid into any account (whether new or continuing) after the occurrence of any circumstances referred to in paragraph (a) above shall reduce or discharge the Secured Obligations.

## **13. FURTHER ASSURANCES**

Subject to the Security Principles, the Chargor shall promptly, at its own expense, take whatever action the Security Trustee or a Receiver may reasonably require (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)) for:

- (a) creating, perfecting or protecting any Security Interest created by, or intended to be created by or pursuant to, this Deed;
- (b) facilitating the realisation of any Security Asset on and after the occurrence of a Declared Default;
- (c) exercising any rights, powers and remedies of the Security Trustee or the Secured Parties provided by or pursuant to this Deed or by law at the times provided; and
- (d) creating and perfecting security in favour of the Security Trustee over the assets of the Chargor located in any jurisdiction outside Hong Kong, including:
  - (i) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, whether to the Security Trustee or to its nominee; and
  - (ii) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Security Trustee may think expedient.

## **14. POWER OF ATTORNEY**

### **14.1 Appointment**

The Chargor by way of security irrevocably appoints the Security Trustee and each Receiver and any of its delegates or sub-delegates severally as its attorney with full power of substitution, on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) prior to the occurrence of a Declared Default, to do anything which the Chargor is obliged to do under this Deed (but has not done and has failed to take all reasonable steps to do so within ten Business Days of being notified of that failure and being requested to do so); and
- (b) on and after the occurrence of a Declared Default, to do anything which the Chargor is obliged to do under this Deed.

#### **14.2 Ratification**

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 14.1 (*Appointment*) save where that attorney has acted fraudulently or with wilful misconduct.

### **15. APPLICATION OF PROCEEDS**

- (a) Without prejudice to any other provisions of this Deed, all amounts and other proceeds or assets received by the Security Trustee or any Receiver pursuant to this Deed or the powers conferred by it shall be applied in accordance with clause 16.1 (*Order of Application*) of the Intercreditor Agreement.
- (b) The order of application referred to in paragraph (a) above shall override any appropriation by the Chargor.
- (c) This Clause is subject to the payment of any claims having priority over the Security. This Clause does not prejudice the right of any Secured Party to recover any shortfall from an Obligor.

### **16. MISCELLANEOUS**

#### **16.1 Time Deposits**

Without prejudice to any right of set-off any Secured Party may have under any Finance Document or otherwise, if any time deposit matures on any account which the Chargor has with a Secured Party prior to the Discharge Date when:

- (a) the Security has become enforceable; and
- (b) no amount of the Secured Obligations is due and payable,

such time deposit shall automatically be renewed for such further maturity as the relevant Secured Party in its absolute discretion considers appropriate unless it otherwise agrees in writing.

#### **16.2 Security Trustee's liability**

Neither the Security Trustee nor any Receiver shall (either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Chargor or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Security Assets or from any act, default, omission or misconduct of the Security Trustee or any Receiver or their respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents except to the extent directly caused by its or his own gross negligence, fraud or wilful misconduct.

## **17. PARTIAL INVALIDITY**

If any provision of this Deed is or becomes invalid, illegal or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability of the remaining provisions in that jurisdiction or of that provision in any other jurisdiction.

## **18. CHANGES TO PARTIES**

### **18.1 Transfer by the Security Trustee**

The Security Trustee may at any time assign or otherwise transfer all or any part of its rights under this Deed to any successor appointed in accordance with the Finance Documents.

### **18.2 Assignments and transfers**

Subject to the Security Principles, the Chargor agrees to be bound by the terms of clause 29 (*Changes to the Lenders*) to 31 (*Changes to the Obligors*) of the Senior Facilities Agreement and clause 19 (*Changes to the Parties*) of the Intercreditor Agreement and authorises the Security Trustee to execute on its behalf any document the Security Trustee reasonably considers necessary in relation to the creation, perfection or maintenance of the Security and any transfer or assignment contemplated by such provisions.

## **19. NOTICES**

### **19.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made in person, by fax, email or letter to the address, fax number or email and shall be effective on receipt.

### **19.2 English language**

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **20. RELEASE**

With effect from the Discharge Date or in accordance with the provisions in clause 31.7 (*Resignation and release of Security on disposal*) of the Senior Facilities Agreement, the Security Trustee shall at the request and cost of the Chargor take any action that may be necessary to release and reassign to the Chargor, the Security Assets from the Security, without recourse to or any representation or warranty by the Security Trustee or any other person.

## **21. GOVERNING LAW AND JURISDICTION**

### **21.1 Governing law**

This Deed is governed by Hong Kong law.

### **21.2 Jurisdiction**

- (a) The Chargor agrees that the courts of Hong Kong (subject to paragraph (c) below) have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed and claims for set-off and counterclaim) (a *Dispute*) and for such purposes the Chargor irrevocably submits to the jurisdiction of the Hong Kong courts.
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 21.2 is for the benefit of the Secured Parties only. As a result, the Secured Parties shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction, and the Chargor irrevocably submits to the jurisdiction of any such court. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.
- (d) A judgment or order in connection with this Deed of any courts referred to in this Clause 21.2 is conclusive and binding on the Chargor and may be enforced against it in the courts of any other jurisdiction.

### **21.3 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Chargor:
  - (i) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the Chargor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Chargor must promptly (and in any event within 20 Business Days of such event taking place) appoint another agent on terms acceptable to the Security Trustee. Failing this, the Security Trustee may appoint another agent for this purpose.

### **21.4 Waiver of immunities**

The Chargor irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from:

- (a) suit;

- (b) jurisdiction of any court;
- (c) relief by way of injunction or order for specific performance or recovery of property;
- (d) attachment of its assets (whether before or after judgment); and
- (e) execution or enforcement of any judgment or arbitral award to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts or arbitral tribunals of any jurisdiction (and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any immunity in any such proceedings).

## **21.5 Counterparts**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

**THIS DEED** has been executed and delivered as a deed on the date stated at the beginning of this Deed.



**SCHEDULE 1**  
**SECURITY ASSETS**

**SHARES**

<b>Chargor</b>	<b>Entity in which Shares are held</b>	<b>Number and class of shares</b>
Airwair (1994) Limited	Dr. Martens Airwair Hong Kong Limited	16,000,000 ordinary shares

**SIGNATORIES**

**THE CHARGOR**

**EXECUTED** as a **DEED** by

**AIRWAIR (1994) LIMITED**

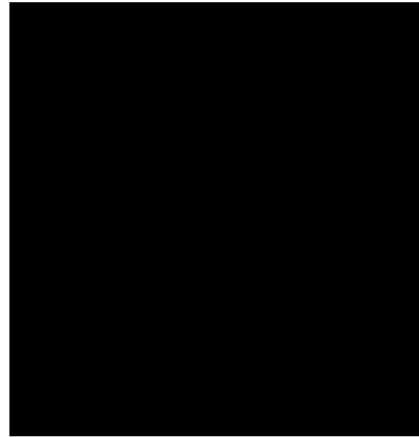
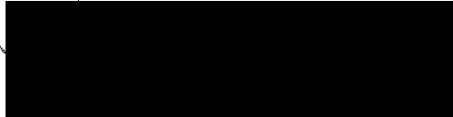
acting by:

Jon William Mortimore

Director

In the presence of:

Witness's signature:



Name:

SUSIE MORTIMORE

Address:



**THE SECURITY TRUSTEE**

**BARCLAYS BANK PLC**

By:

