



**Registration of a Charge**

Company name: **BETABITE HYDRAULICS & ENGINEERING LIMITED**

Company number: **02877457**



X3K1KF81

Received for Electronic Filing: **05/11/2014**

---

**Details of Charge**

Date of creation: **31/10/2014**

Charge code: **0287 7457 0002**

Persons entitled: **EDWARD SAGAR FORT  
IAN WILSON**

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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **TILLY BAILEY & IRVINE LLP**



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

Company number: 2877457

Charge code: 0287 7457 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st October 2014 and created by BETABITE HYDRAULICS & ENGINEERING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th November 2014 .

Given at Companies House, Cardiff on 6th November 2014

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**

31 OCTOBER 2014

**DEBENTURE**

between

**(1) BETABITE HYDRAULICS LIMITED**

and

**(2) EDWARD SAGAR FORT OBE AND IAN WILSON**



**Tilly Bailey & Irvine**

**Tilly Bailey & Irvine LLP**

**12 Evolution**

**Wynyard Park**

**Wynyard**

**TS22 5TB**

**[www.tbilaw.co.uk](http://www.tbilaw.co.uk)**

## CONTENTS

---

### CLAUSE

1.	Definitions and interpretation.....	1
2.	Covenant to pay.....	4
3.	Grant of security.....	4
4.	Liability of the Chargor.....	6
5.	General covenants .....	7
6.	Equipment covenants .....	10
7.	Powers of the Sellers.....	10
8.	When security becomes enforceable .....	11
9.	Enforcement of security .....	13
10.	Receiver .....	15
11.	Powers of Receiver .....	16
12.	Application of proceeds .....	19
13.	Costs.....	20
14.	Further assurance .....	20
15.	Release .....	20
16.	Assignment and transfer.....	20
17.	Amendments, waivers and consents.....	21
18.	Severance .....	21
19.	Counterparts .....	21
20.	Third party rights.....	22
21.	Further provisions .....	22
22.	Notices .....	22
23.	Governing law and jurisdiction .....	24

THIS DEED is dated 31 October 2014.

## **PARTIES**

- (1) BETABITE HYDRAULICS LIMITED, a company incorporated and registered in England and Wales with company number 02877457 whose registered office is at Stuart Road, Manor Park, Runcorn, Cheshire, WA7 1TS (**Chargor**).
- (2) EDWARD SAGAR FORT OBE of Ashcroft, Crow Trees Brow, Chatburn, Clitheroe, Lancashire, BB7 4LB and IAN WILSON of Dudland Hollins, Gisburn Road, Clitheroe, Lancashire, BB7 4LJ (**Sellers**).

## **BACKGROUND**

- 161
- (A) The Buyer owes money to the Sellers under the provisions of the share sale and purchase agreement dated 31/10/14 made between (1) the Sellers and (2) the Buyer in relation to the acquisition by the Buyer of the entire issued share capital of Betabite Hydraulics Limited.
  - (B) Under this deed, the Chargor provides security to the Sellers in relation to the money owed as described above.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following definitions apply in this deed:

**Administrator:** an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 7.5.

**Book Debts:** all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Buyer:** Tesserrae Holdings (2013) Limited (company number 08671817), whose registered office is at Norton Hall, 1 Norton Close, Wath, Ripon, North Yorkshire, HG4 5NZ.

**Equipment:** all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default:** has the meaning given to that expression in clause 8.2.

**Financial Collateral:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Financial Collateral Regulations:** the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the properties of the Chargor or the Equipment).

**LPA 1925:** Law of Property Act 1925.

**Permitted Security:** the deed of charge with the same date as this deed made between (1) the Company and (2) Skipton Business Finance Limited in relation to the debts of the Company referred to in that deed.

**Receiver:** a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Sellers under clause 10.

**Secured Assets:** all the assets for the time being subject to the Security created by, or pursuant to, this deed.

**Secured Liabilities:** all present and future monies owed by the Buyer or the Chargor to the Sellers under the Share Purchase Agreement or this deed.

**Security Financial Collateral Arrangement:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period:** the period starting on the date of this deed and ending on the date on which the Sellers are satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Share Purchase Agreement:** the share sale and purchase agreement with the same date as this deed made between (1) the Sellers and (2) the Buyer in relation to the entire issued share capital of the Chargor.

## 1.2 Interpretation

In this deed:

- (a) clause headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture

or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;

- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax but not e-mail;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause is to a clause of this deed;
- (l) any words following the terms **including** and **include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (n) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (o) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### **1.3 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **2. COVENANT TO PAY**

2.1 The Chargor shall, on demand, pay to the Sellers and discharge the Secured Liabilities when they become due.

2.2 It is expressly agreed and understood that:

- (a) the sole recourse of the Sellers to the Chargor under this deed is to the Chargor's interest in the Secured Assets; and
- (b) the liability of the Chargor to the Sellers pursuant to or otherwise in connection with this deed shall be:
  - (i) limited in aggregate to an amount equal to that recovered as a result of enforcement of this deed with respect to the Secured Assets; and
  - (ii) satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this deed.

## **3. GRANT OF SECURITY**

### **3.1 Permitted Security**

The Sellers acknowledge that the Permitted Security has priority over the Security created by this deed and confirm that they will enter into a deed reasonably required by a counterpart benefitting from the Permitted Security confirming that beneficiary's priority.

### **3.2 Floating charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Sellers by way of floating charge:

- (a) all its present and future goodwill;
- (b) all its uncalled capital;
- (c) all the Equipment;



- (d) all its stock;
- (e) all the Book Debts;
- (f) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person, together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest); and
- (g) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3.

### **3.3 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Sellers absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy.

### **3.4 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charges created by clause 3.2.

### **3.5 Automatic crystallisation of floating charge**

A floating charge created by clause 3.1 shall automatically and immediately (without notice) convert into a fixed charge over the assets which are subject to that floating charge if:

- (a) the Chargor:
  - (i) creates, or attempts to create, without the prior written consent of the Sellers, a Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed); or
  - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or

- (c) a resolution is passed or an order is made for the winding-up, dissolution or administration of the Chargor except any such winding-up dissolution or administration of the Chargor and/or its affairs while it is solvent.

### **3.6 Crystallisation of floating charge by notice**

The Sellers may, in their sole discretion, by written notice to the Chargor, convert any of the floating charges created under this deed into a fixed charge as regards any part of the Secured Assets (except the Book Debts) specified by the Sellers in that notice if:

- (a) an Event of Default occurs and is continuing; or
- (b) the Sellers consider those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

## **4. LIABILITY OF THE CHARGOR**

### **4.1 Liability not discharged**

The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Sellers may now or after the date of this deed have from or against the Buyer, the Chargor or any other person in connection with the Secured Liabilities;
- (c) any act or omission by the Sellers or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Buyer, the Chargor or any other person;
- (d) any termination, amendment, variation, novation or supplement of or to any of the Secured Liabilities;
- (e) any grant of time, indulgence, waiver or concession to the Buyer, the Chargor or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Buyer, the Chargor or any other person;

- (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Buyer, the Chargor or any other person in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Buyer, the Chargor or any other person; or
- (i) any other act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this deed.

#### **4.2 Immediate recourse**

The Chargor waives any right it may have to require the Sellers:

- (a) to take any action or obtain judgment in any court against the Buyer or any other person;
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Buyer or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Buyer or any other person,

before taking steps to enforce any of its rights or remedies under this deed.

#### **4.3 Non-competition**

The Chargor warrants to the Sellers that it has not taken or received, and shall not take, exercise or receive the benefit of any rights from or against the Buyer, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Chargor under this deed.

### **5. GENERAL COVENANTS**

#### **5.1 Negative pledge and disposal restrictions**

The Chargor shall not at any time, except with the prior written consent of the Sellers:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed or any Permitted Security;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the

Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

## **5.2 Compliance with laws and regulations**

- (a) The Chargor shall not, without the Sellers's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Chargor shall:
  - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
  - (iii) effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

## **5.3 Enforcement of rights**

The Chargor shall use its best endeavours to:

- (a) procure the observance and performance of the covenants and other obligations imposed on the Chargor's counterparties (including each insurer in respect of an Insurance Policy); and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Sellers may reasonably require from time to time.

## **5.4 Insurance**

- (a) The Chargor shall insure and keep insured the Secured Assets against:
  - (i) loss or damage by fire or terrorist acts;
  - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and
  - (iii) any other risk, perils and contingencies as the Sellers may reasonably require.

- (b) The Chargor shall, if requested by the Sellers, produce to the Sellers each policy, certificate or cover note relating to the insurance required by clause 5.4(a).
- (c) The Chargor shall, if requested by the Sellers, procure that a note of the Sellers' interest is endorsed upon each insurance policy maintained by it or any person on its behalf in accordance with clause 5.4(a) and that the terms of each such insurance policy require the insurer not to invalidate the policy as against the Sellers by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Sellers.

#### **5.5 Insurance premiums**

The Chargor shall:

- (a) promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 5.4(a) and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Sellers so require) produce to, or deposit with, the Sellers the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with clause 5.4(a).

#### **5.6 Proceeds of insurance policies**

All monies received or receivable by the Chargor under any insurance policy maintained by it in accordance with clause 5.4(a) (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this deed has become enforceable) shall:

- (a) be held by the Chargor as trustee of the same for the benefit of the Sellers (and the Chargor shall account for them to the Sellers); and
- (b) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and if the Sellers so directs, in or towards discharge or reduction of the Secured Liabilities.

#### **5.7 Information**

The Chargor shall:

- (a) give the Sellers such information concerning the location, condition, use and operation of the Secured Assets as the Sellers may require; and

- (b) permit any persons designated by the Sellers and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice.

## **5.8 Payment of outgoings**

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Sellers.

## **6. EQUIPMENT COVENANTS**

### **6.1 Maintenance of Equipment**

The Chargor shall:

- (a) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules; and
- (b) not permit any Equipment to be:
  - (i) used or handled other than by properly qualified and trained persons; or
  - (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable.

## **7. POWERS OF THE SELLERS**

### **7.1 Power to remedy**

- (a) The Sellers shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- (b) The Chargor irrevocably authorises the Sellers and its agents to do all things that are necessary or desirable for that purpose.

### **7.2 Exercise of rights**

- (a) The rights of the Sellers under clause 7.1 are without prejudice to any other rights of the Sellers under this deed.
- (b) The exercise of any rights of the Sellers under this deed shall not make the Sellers liable to account as a mortgagee in possession.

### **7.3 Power to dispose of chattels**

- (a) At any time after the security constituted by this deed has become enforceable, the Sellers or any Receiver may, as agent for the Chargor, dispose of any chattels found on any property occupied by the Chargor.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under clause 7.3(a), the Chargor shall indemnify the Sellers and any Receiver against any liability arising from any disposal made under clause 7.3(a).
- (c) Clauses 7.3(a) and 7.3(b) shall not apply to any chattels owned by third parties and the Chargor has given to the Seller confirmation of the identities of the relevant third parties.

### **7.4 Indulgence**

The Sellers may, at their discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

### **7.5 Appointment of an Administrator**

- (a) The Sellers may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- (b) Any appointment under this clause 7.5 shall:
  - (i) be in writing signed by a duly authorised signatory of the Sellers; and
  - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Sellers may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.5 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **8. WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

## **8.2 Events of Default**

Each of the events or circumstances set out in clause 8.3 to clause 8.7 is an **Event of Default**.

## **8.3 Non-payment**

The Buyer fails to pay any sum payable by it under the Share Purchase Agreement when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within five Business Days of its due date.

## **8.4 Non-compliance**

The Buyer fails to comply with any provision of the Share Purchase Agreement and (if the Sellers consider, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:

- (a) the Sellers notifying the Buyer and the Chargor of the default and the remedy required; and
- (b) the Buyer and the Chargor becoming aware of the default.

## **8.5 Cessation of business**

The Buyer suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

## **8.6 Insolvency**

- (a) The Buyer stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due.
- (b) The Buyer commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).
- (c) A moratorium is declared in respect of any Indebtedness of the Buyer.
- (d) Any action, proceedings, procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a



voluntary arrangement, scheme of arrangement or otherwise) of the Buyer; or

- (ii) a composition, compromise, assignment or arrangement with any creditor of the Buyer; or
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Buyer or any of its assets.
- (e) The value of the Buyer's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- (f) Clause 8.6(a) to clause 8.6(e) (inclusive) 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.

#### **8.7 Creditors' process**

A distress, attachment, execution, expropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the Buyer's assets having an aggregate value of £20,000.00p and is not discharged or stayed within 30 days.

#### **8.8 Discretion**

After the security constituted by this deed has become enforceable, the Sellers may, in their absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms they think fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

### **9. ENFORCEMENT OF SECURITY**

#### **9.1 Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Sellers and a purchaser from the Sellers, arise on and be exercisable at any time after the execution of this deed, but the Sellers shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 8.1.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### **9.2 Access on enforcement**

- (a) At any time after the Sellers have demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed, the Chargor will allow the Sellers or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Sellers or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- (b) At all times, the Chargor must use its best endeavours to allow the Sellers or its Receiver access to any premises for the purpose of clause 9.2(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### 9.3 Prior Security

At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Sellers may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor. All monies paid by the Sellers to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Sellers, be due from the Chargor to the Sellers and shall bear interest and be secured as part of the Secured Liabilities.

### 9.4 Protection of third parties

No purchaser, mortgagee or other person dealing with the Sellers or any Receiver shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Sellers or a Receiver is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Sellers or any Receiver is to be applied.

### 9.5 Privileges

Each Receiver and each Sellers is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

**9.6 No liability as mortgagee in possession**

Neither the Sellers, any Receiver nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

**9.7 Conclusive discharge to purchasers**

The receipt of the Sellers, or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Sellers, and every Receiver may do so for any consideration, in any manner and on any terms that it or he thinks fit.

**10. RECEIVER**

**10.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Chargor, the Sellers may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

**10.2 Removal**

The Sellers may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by them and may, whenever they think fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**10.3 Remuneration**

The Sellers may fix the remuneration of any Receiver appointed by them without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

#### **10.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Sellers under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

#### **10.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Sellers despite any prior appointment in respect of all or any part of the Secured Assets.

#### **10.6 Agent of the Chargor**

Any Receiver appointed by the Sellers under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Sellers.

### **11. POWERS OF RECEIVER**

#### **11.1 General**

- (a) Any Receiver appointed by the Sellers under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 11.2 to clause 11.17.
- (b) 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.
- (c) Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Chargor, the directors of the Chargor or himself.

#### **11.2 Employ personnel and advisors**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on

any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

### **11.3 Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Sellers may prescribe or agree with him.

### **11.4 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

### **11.5 Manage or reconstruct the Chargor's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.

### **11.6 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

### **11.7 Sell Book Debts**

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.

### **11.8 Valid receipts**

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

**11.9 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

**11.10 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.

**11.11 Improve the Equipment**

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

**11.12 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 13, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.

**11.13 Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**11.14 Borrow**

A Receiver may, for any of the purposes authorised by this clause 11, raise money by borrowing from the Sellers (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Sellers consents, terms under which that security ranks in priority to this deed).

**11.15 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **11.16 Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

#### **11.17 Incidental powers**

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) that he lawfully may or can do as agent for the Chargor.

### **12. APPLICATION OF PROCEEDS**

#### **12.1 Order of application of proceeds**

All monies received by the Sellers or a Receiver pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Sellers (and any Receiver, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Sellers determine; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

#### **12.2 Appropriation**

Neither the Sellers nor any Receiver shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **13. COSTS**

#### **Costs**

The Chargor shall, within ten Business Days of demand, pay to, or reimburse, the Sellers and any Receiver all reasonable costs, charges, expenses, taxes and liabilities incurred by the Sellers or any Receiver in connection with:

- (a) this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Sellers's or a Receiver's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities.

### **14. FURTHER ASSURANCE**

The Chargor shall, at its own expense, take whatever action the Sellers or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Sellers or any Receiver in respect of any Secured Asset,

including, without limitation (if the Sellers or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Sellers or to its nominee) and the giving of any notice, order or direction and the making of any registration.

### **15. RELEASE**

On the expiry of the Security Period (but not otherwise), the Sellers shall, at the request and cost of the Chargor, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to the Chargor.

### **16. ASSIGNMENT AND TRANSFER**

Neither the Chargor nor any of the Sellers may assign or transfer any of its rights or obligations, under this deed.



## **17. AMENDMENTS, WAIVERS AND CONSENTS**

### **17.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **17.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Sellers shall be effective unless it is in writing.

### **17.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **18. SEVERANCE**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **19. COUNTERPARTS**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

## **20. THIRD PARTY RIGHTS**

Except in relation to a person with the benefit of a Permitted Security, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **21. FURTHER PROVISIONS**

### **21.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Sellers may hold for any of the Secured Liabilities at any time. No prior security held by the Sellers over the whole or any part of the Secured Assets shall merge in the security created by this deed.

### **21.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Sellers discharges this deed in writing.

### **21.3 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

## **22. NOTICES**

### **22.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:
  - (i) the Chargor at:

Betabite Hydraulics Limited

Stuart Road

Manor Park

Runcorn

Cheshire

WA7 1TS

Attention: Douglas A A H Bedford

(ii) the Sellers at:

Fort Vale Engineering Limited

Calder Vale Park

Simonstone Lane

Simonstone

Burnley

Lancashire

BB12 7ND

Attention: Andy Foulds (Group Accountant)

or to any other address as is notified in writing by one party to the other from time to time.

## **22.2 Receipt by Chargor**

Any notice or other communication that the Sellers gives to the Chargor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 22.2(a) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **22.3 Receipt by Sellers**

Any notice or other communication given to the Sellers shall be deemed to have been received only on actual receipt.

#### **22.4 Service of proceedings**

This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### **22.5 No notice by e-mail**

A notice or other communication given under or in connection with this deed is not valid if sent by e-mail.

### **23. GOVERNING LAW AND JURISDICTION**

#### **23.1 Governing law**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

#### **23.2 Jurisdiction**

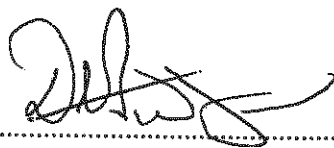
Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Sellers to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

#### **23.3 Other service**


The Chargor irrevocably consents to any process in any legal action or proceedings under clause 23.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED by  
BETABITE HYDRAULICS LIMITED  
acting by a director in the presence of:

  
.....  
Douglas Allan Andrew Humphrey Bedford

Witness name: CRAIG JAMES MAURKEY

Signature:  .....

Address: Tilly Bailey & Irvine LLP  
12 Evolution  
Wynyard Park  
Wynyard TS22 5TB  
.....

Occupation: Solicitor .....

EXECUTED as a DEED by  
EDWARD SAGAR FORT OBE  
in the presence of:

.....  
Edward Sagar Fort OBE

Witness name: .....

Signature: .....

Address: .....

.....

Occupation:  
.....

EXECUTED as a DEED by  
IAN WILSON  
in the presence of:

.....  
Ian Wilson

Witness name: .....

Signature: .....

Address: .....

.....

Occupation:

.....