



Registration of a Charge

Company name: **GERALD UK LIMITED**

Company number: **03961277**



X85WK5F7

Received for Electronic Filing: **21/05/2019**

Details of Charge

Date of creation: **20/05/2019**

Charge code: **0396 1277 0008**

Persons entitled: **UNICREDIT BANK AG**

Brief description: **NOT APPLICABLE**

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

PHILIP BESWICK



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3961277

Charge code: 0396 1277 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th May 2019 and created by GERALD UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st May 2019 .

Given at Companies House, Cardiff on 22nd May 2019

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

Name: Philip Desnick
Title: Solicitor

Return to Bank
Execution Version

Date: 21/05/2019

Hogan Lovells International LLP (Ref: F3/AMT/MA)
Atlantic House, Holborn Viaduct, London EC1A 2FG

This **DEED OF ASSIGNMENT** (the "**Deed**") is made as a deed on 20 MAY 2019 between:

- (1) **Gerald Metals SA**, a public limited company (*société anonyme*) organised under the laws of Switzerland, having its registered office at 29, Rue de la Gare, 1110 Morges, Switzerland and registered under registration number CHE-107.884.163 (the "**Chargor 1**");
- (2) **Gerald UK Limited**, a limited liability company incorporated under the laws of England and Wales, having its registered office at Third Floor, One Strand Grand Buildings, Trafalgar Square, London, WC2N 5HR, United Kingdom and registered under company number 03961277 (the "**Chargor 2**", and together with Chargor 1, the "**Chargors**" and each a "**Chargor**"), and
- (3) **UNICREDIT BANK AG**, a stock corporation (*Aktiengesellschaft*) organised under the laws of Germany, having its corporate seat in Munich, Germany, and registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under number HR B 421 48, with business address at Arabellastrasse 14, 81925 Munich, Germany (the "**Lender**"),
(each a "**Party**" and together, the "**Parties**").

WHEREAS:

- (A) The Lender has agreed to make available to the Chargors financial accommodations for the purpose of financing the purchase of ferrous and non-ferrous metals as well as precious metals, steel and raw materials as well as soft commodities pursuant to the terms of the Facility Agreement (as defined below).
- (B) In consideration of the Lender making such financial accommodations available to the Chargors, the Chargors have agreed to enter into this Deed in support of their respective obligations under the Facility Agreement.

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

1.1 Expressly defined terms

In this Deed:

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are open for general business in Munich, Frankfurt am Main, London, New York and Geneva.

"**Charging Confirmation**" means the confirmation in the form set out at Schedule 1 (*Form of Charging Confirmation*) delivered by the relevant Chargor(s) to the Lender.

"**Contract Party**" means each party to a Relevant Contract other than the Chargors (including, without limitation, any person that subsequently becomes a party to a Relevant Contract) and if more than one such party shall, where the context so requires, mean any one or each of them.

"**Contract Proceeds**" means all proceeds of any Relevant Contract from time to time in whatever form they may be, including:

- (a) all monies receivable under, arising out of, or evidenced by, any Relevant Contract;
- (b) any other rights, titles, benefits or interests (whether present, future, proprietary contractual or otherwise) of any Chargor in, under, arising out of, or evidenced by, any Relevant Contract;
- (c) the Chargors' estate or interest in any property the subject of any Relevant Contract;

- (d) the benefit of any Authorisation, conveyance, assignment, transfer, lease or licence which may be granted to a Chargor in relation to any Relevant Contract, whether or not arising out of an obligation contained in such Relevant Contract;
- (e) all claims competent to the Chargors to recover and receive damages or compensation arising out of or relating to any breach or termination of any Relevant Contract or any Authorisation, conveyance, assignment, transfer, lease or licence referred to in paragraph (d) above; and
- (f) the full benefit of all guarantees, indemnities, bonds, debentures, mortgages, charges or other security given in relation to any Relevant Contract or any obligation of any Contract Party arising under any Relevant Contract.

"Delegate" means any delegate, agent, attorney or trustee appointed by the Lender or any Receiver.

"Default Rate" means two per cent. per annum above the highest rate of Interest ordinarily applicable to the Secured Obligations from time to time.

"Discharge Date" means the date with effect from which the Lender confirms to the Chargors that (i) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and, owing the uncommitted and revolving character of the facility provided for under the Facility Agreement, notwithstanding of any intermediate/temporary payment of the Secured Obligations, (ii) the Borrowers have and/or the Lender has cancelled all of the uncommitted facility provided for under the Facility Agreement and (iii) the Lender is not under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Borrower pursuant to the Finance Documents.

"Enforcement Party" means any of the Lender, a Receiver or a Delegate.

"Event of Default" means the occurrence of any of the events or circumstances defined in the Facility Agreement as an Event of Default.

"Expenses" means all fees, discounts, commissions and other banking or service charges, legal and other professional fees, premiums, costs or expenses, in each case calculated on a full indemnity basis and together with VAT, incurred by any Enforcement Party in connection with the Secured Assets, the preparation, negotiation and creation of this Deed, taking, perfecting, enforcing or exercising any power under this Deed, the appointment of any Receiver or Delegate, the breach of any provision of this Deed and/or the protection, realisation or enforcement of this Deed, and includes the costs of transferring to the Lender or the Receiver any security ranking in priority to the security constituted by this Deed, or the amount required to be paid to secure the unconditional and irrevocable discharge of such security, or any of the foregoing as the context shall require.

"Facility Agreement" means the facility agreement dated on or around the date of this Deed made between (1) the Chargors as borrowers and (2) the Lender for the provision of an uncommitted facility (as amended, varied, novated, supplemented, superseded or extended from time to time).

"Financed Cargo" means the Goods directly or indirectly financed or re-financed by the Lender through any facility advanced pursuant to the terms of the Facility Agreement.

"Finance Documents" shall have the meaning given to such term in the Facility Agreement.

"Floating Charge Assets" means, at any time, all of the Secured Assets which are at that time the subject of any floating charge created by this Deed.

"Goods" means any ferrous and non-ferrous metals as well as precious metals, steel and raw materials as well as soft commodities and such other property, products and assets in connection with the same.

"Insolvency Act" means Insolvency Act 1986.

"Insurance Policy" means all contracts or policies of insurance of whatever nature relating to the Relevant Contracts (or their subject matter (including the Financed Cargo)) which from time to time are taken out or maintained by or on behalf of a Chargor or (to the extent of its relevant interest) in which such Chargor has an interest, howsoever defined.

"Insurance Proceeds" means the proceeds of any insurance claim (including in relation to any loss or damage to any Financed Cargo) received by a Chargor, after deduction of any reasonable expenses incurred in relation to the relevant claim and payable by any Chargor to any person which is not a member of the group together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of any Chargor's ownership of or interest in the Insurance Policies and all interest on any of the foregoing.

"Interest" means interest at the rate provided and calculated and compounded in accordance with the Facility Agreement.

"LPA" means Law of Property Act 1925.

"Receiver" means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this Deed in respect of any Chargor or in respect of the Secured Assets or any of them.

"Relevant Contracts" means all those contracts or agreements entered into by one or more Chargors in connection with the sale and/or purchase by them of any Financed Cargo and each other agreement designated as such by the Lender and a Chargor, and the expression **"Relevant Contract"** shall also mean any one of such contracts or agreements, any monies (including any deposit, advance or instalment payment) payable to such Chargor for or in connection with the disposal (by whatever means and whether or not permitted by this Deed) of the Relevant Contracts (or any of them) or any interest in the Relevant Contracts (or any of them).

"Secured Assets" means the rights, assets, property or entitlements from time to time charged, assigned or otherwise the subject of any security created by or pursuant to this Deed and includes any part or parts of such assets.

"Secured Obligations" means, with respect to a Chargor, any and all obligations, monies and liabilities (present and future, actual and contingent) and whether owed as principal or surety or in any other capacity, which are (or are expressed to be) or become owing by that Chargor to the Lender under or in connection with the Finance Documents including any obligation based on unjust enrichment (*ungerechtfertigte Bereicherung*) or tort (*Delikt*) and, for the avoidance of doubt, including any such obligations, monies and liabilities owing as a result of and/or following an accordion increase of the facility amount made available under the Facility Agreement effected with the consent of that Chargor from time to time in accordance with the Facility Agreement.

"Security Period" means the period beginning on the date of this Deed and ending on the Discharge Date.

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999.

"VAT" means value added tax as provided for in the Value Added Taxes Act 1994 and any other tax of a similar fiscal nature.

1.2 Construction

In this Deed:

1.2.1 any reference to:

1.2.1.1 the word **"assets"** includes present and future property, undertaking, revenue, rights, benefits and interests of every kind;

1.2.1.2 the word **"guarantee"** includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- 1.2.1.3 the word "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.4 the word "**law**" includes law established by or under statute, constitution, treaty, decree, regulation or judgment, common law and customary law; and the word "**lawful**" and similar words and phrases are to be construed accordingly;
- 1.2.1.5 the word "**person**" includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership, joint venture or trust (in each case, whether or not it has separate legal personality);
- 1.2.1.6 the word "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.7 the word "**security**" includes a mortgage, land charge, charge, pledge, lien, assignment or transfer for security purposes, retention of title arrangement or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
- 1.2.1.8 the word "**set-off**" includes analogous rights and obligations in other jurisdictions; and
- 1.2.1.9 the word "**tax**" includes any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
- 1.2.2 except where this Deed expressly states otherwise, each term used in this Deed which is defined in the Facility Agreement has the same meaning as in the Facility Agreement, construed in accordance with the Facility Agreement;
- 1.2.3 where something (or a list of things) is introduced by the word "**including**", or by the phrase "**In particular**", or is followed by the phrase "**or otherwise**", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- 1.2.4 each reference to a "**Chargor**", the "**Lender**" or to any "**Party**" includes its successors in title, and its permitted assignees or permitted transferees;
- 1.2.5 each reference to any "**Contract Party**" shall extend to any permitted assignee or transferee of, or successor in title to, any such person, and to any other person who is obligated to a Chargor under the terms of a Relevant Contract;
- 1.2.6 each reference to any "**Contract Proceeds**" shall include each and any category or part of the Contract Proceeds independently of every other category or part
- 1.2.7 unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);
- 1.2.8 each reference to this Deed (or to any other agreement or deed) means, at any time, this Deed (or as applicable such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of this Deed or of the Facility Agreement;

- 1.2.9 each reference to the singular includes the plural and vice versa, as the context permits or requires;
- 1.2.10 the index and each heading in this Deed is for convenience only and does not affect the meaning of the words which follow it;
- 1.2.11 each reference to a Clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant Clause of or Schedule to this Deed;
- 1.2.12 wherever this Deed states that a Chargor must not take a particular step without the consent of the Lender, the Lender has discretion whether to give its consent and can impose conditions on any such consent it gives; and
- 1.2.13 an Event of Default is "**continuing**" if it has not been waived.

1.3 **Third Party Rights**

- 1.3.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed or the Facility Agreement except to the extent that this Deed expressly provides for it to do so.
- 1.3.2 No consent of any person who is not a Party is required to rescind or vary this Deed at any time.
- 1.3.3 This Clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

2. **COVENANT TO PAY**

2.1 **Consideration**

Each Chargor has entered into this Deed in consideration of the Lender agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed between them.

2.2 **Covenant**

Each Chargor hereby, as primary obligor and not merely as surety, covenants with the Lender that it will pay, discharge and perform its Secured Obligations on demand and in the manner provided for in the Finance Documents.

2.3 **Multiple demands**

The making of one demand under this Deed shall not preclude the Lender from making further demands.

3. **CHARGING CLAUSE**

3.1 **Security Assignment**

Each Chargor, as a continuing security for the payment, discharge and performance of its Secured Obligations assigns absolutely to the Lender all its rights, title and interest in the following assets:

- 3.1.1 the Relevant Contracts;
- 3.1.2 the Contract Proceeds; and
- 3.1.3 the Insurance Proceeds,

from time to time and in each case to the fullest extent capable of assignment and subject to re-assignment on redemption as provided in Clause 14.15 (*Release of security*).

For the avoidance of doubt, the assignment contained in this Clause 3.1 (insofar as it relates to any Insurance Policy) shall not be construed to constitute an assignment of any Insurance Policy but only an assignment of the Insurance Proceeds.

3.2 **Notice of new Relevant Contract, Contract Proceeds, Insurance Policies and Insurance Proceeds**

Immediately following the occurrence of an Event of Default (and in any event no later than one Business Day following such Event of Default), each Chargor who is a party to a contract or agreement for the sale and/or purchase of any Goods that constitutes a Financed Cargo and/or has any interest in any Contract Proceeds and/or has any interest in any Insurance Policy and/or Insurance Proceeds, shall deliver to the Lender a Charging Confirmation confirming the details of all such contracts or agreements and that the same are Relevant Contracts and/or Contract Proceeds and/or Insurance Policies and/or Insurance Proceeds (as applicable). For the avoidance of doubt, such Charging Confirmation is for confirmation purposes only and such contracts or agreements or Insurance Proceeds that are purportedly assigned pursuant to Clause 3.1 (*Security Assignment*) shall be treated for all purposes as having been assigned with effect from the later of any such contract or agreement being entered into and the date of this Deed.

3.3 **Notice of assignment**

At any time after the occurrence of an Event of Default, at the request of the Lender (acting in its sole discretion) (each such request being a "**Notice Request**"), each Chargor shall immediately upon receiving such Notice Request, give notice of each such assignment of its right, title and interest (if any) in and to:

3.3.1 the Relevant Contracts or to such of them as the request relates and the Contract Proceeds by sending a notice in the form set out in Part 1 (*Form of notice of assignment*) of Schedule 2 (*Form of notice and acknowledgement of assignment of Relevant Contracts*) (with such amendments as the Lender may agree) duly completed to each of the relevant Contract Parties; and

3.3.2 the Insurance Proceeds by sending a notice in the form set out in Part 1 (*Form of notice of assignment*) of Schedule 3 (*Form of notice and acknowledgement of assignment of Insurance Proceeds*) (with such amendments as the Lender may agree) duly completed to each of the other parties to the Insurance Policies,

and each Chargor shall use best efforts to procure that, within 14 days of the date of its receiving such Notice Request, each such Contract Party or other party to an Insurance Policy (as applicable) delivers an acknowledgement to the Lender in the form of the acknowledgement of notice contained in Part 2 (*Form of acknowledgement of assignment*) of Schedule 2 (*Form of notice and acknowledgement of assignment of Relevant Contracts*) (in the case of each of the Relevant Contracts and the Contract Proceeds) or in Part 2 (*Form of acknowledgement of assignment*) of Schedule 3 (*Form of notice and acknowledgement of assignment of Insurance Proceeds*) (in the case of Insurance Proceeds) with such amendments as the Lender may agree.

3.4 **Security Trust**

Each Chargor declares that to the extent that any Secured Asset cannot be or is not effectively assigned pursuant to Clause 3.1 (*Security Assignment*) above for any reason whatsoever, the relevant Chargor shall:

3.4.1 hold all rights, title and interests in and to the same on trust for the Lender as security for the payment and discharge of the Secured Obligations; and

3.4.2 take such steps as the Lender may require to remove such impediment to assignment.

3.5 **Exercise of rights and obligations under Relevant Contracts**

3.5.1 Provided that no Event of Default has occurred and is continuing, but subject to Clause 6.4 (*Relevant Contracts*), the Chargors shall be entitled to exercise their respective rights under any of the Relevant Contracts to which they are party, provided that the exercise of those rights in the manner proposed would not result in the occurrence of an Event of Default.

3.5.2 At any time following the occurrence of an Event of Default which is continuing, each Chargor shall exercise its rights under any of the Relevant Contracts in accordance with the instructions of the Lender.

- 3.5.3 Each Chargor shall, at all times, remain liable to perform all of the obligations assumed by it under the Relevant Contracts and the Lender shall assume no obligation of any kind whatsoever under the Relevant Contracts, nor be under any liability whatsoever in the event of any failure by any Chargor to perform its respective obligations under the Relevant Contracts and the relevant Chargor will at all times indemnify, on a full indemnity basis, the Lender from and against any demands, claims, damages, costs or expenses arising from or in relation to the Relevant Contracts or any such failure by that Chargor.

3.6 Floating charge

As a continuing security to the Lender for the payment, discharge and performance of its Secured Obligations, each Chargor charges in favour of the Lender, by way of first floating charge, all its assets, rights and entitlements in connection with each Financed Cargo (but excluding the Financed Cargo itself) from time to time (both present and future), wherever located, including all Relevant Contracts, all Contract Proceeds and all Insurance Proceeds from time to time, insofar as such assets, rights and entitlements are not effectively assigned or charged pursuant to Clause 3.1 (*Security Assignment*) of this Deed.

3.7 Conversion of floating charge

- 3.7.1 The Lender may, at any time, by notice in writing to a Chargor, convert any floating charge created by this Deed into a fixed charge as regards any part of the Secured Assets as it shall specify in the relevant notice if:

- 3.7.1.1 an Event of Default has occurred which is continuing; or
- 3.7.1.2 the Lender is of the view that (a) such assets are in danger of being seized, (b) any legal process or execution is being enforced against such assets, (c) such assets are otherwise in jeopardy, or (d) steps have been taken which would, in the reasonable opinion of the Lender, be likely to lead to the appointment of an administrator or administrative receiver in relation to a Chargor (or such administrator or administrative receiver has been appointed) or to the winding-up of a Chargor or any analogous procedures under the law of any jurisdiction.

- 3.7.2 By way of further assurance, each Chargor shall, promptly following service of such notice upon it in accordance with Clause 3.7.1, execute a fixed charge over such assets in such form as the Lender may require.

3.8 Automatic conversion of floating charge

In addition to any circumstances in which any floating charge created under this Deed will crystallise automatically under the general law, and without prejudice to the operation of Clause 3.7 (*Conversion of floating charge*):

- 3.8.1 if a Chargor creates (or purports to create) any security or other form of preferential right in favour of any third party other than the Lender on or over any of the Floating Charge Assets without the prior written consent of the Lender; or
- 3.8.2 if a Chargor convenes any meeting of its members to consider a resolution in relation to its winding up, or if a liquidator, administrative receiver, receiver, administrator or another similar officer is appointed in respect of such Chargor or any of its assets (or any analogous procedure under the law of any jurisdiction),

then and in any such event, any floating charge created by this Deed in relation to such Chargor shall, without any notice being given under Clause 3.7 (*Conversion of floating charge*) and immediately upon such event occurring, be converted into a fixed charge over all the assets which immediately prior to such conversion comprised the Floating Charge Assets of such Chargor.

3.9 Reconversion

Any charge which has crystallised under Clause 3.7 (*Conversion of floating charge*) or Clause 3.8 (*Automatic conversion of floating charge*) may, by notice in writing given at any

time by the Lender to the relevant Chargor, be reconverted into a floating charge in relation to the Secured Assets specified in such notice.

3.10 Continuing security

This Deed is a continuing security and shall remain in full force and effect until the Discharge Date. This Deed shall continue to be in force and effect in the event of any Chargor's insolvency, bankruptcy or appointment of a receiver or of a liquidator over any Chargor's assets

3.11 Full title guarantee and implied covenants

All the security created or given under this Deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.12 Miscellaneous

The fact that no or incomplete details of any particular Secured Assets are included or inserted in this Deed or any Charging Confirmation shall not affect the validity or enforceability of the charges created by this Deed.

4. FURTHER ASSURANCE

4.1 General

4.1.1 Each Chargor must at its own expense promptly do all such acts and things and execute such documents (including deeds, assignments, transfers, mortgages, charges, notices, instructions, assurances, agreements and instruments) as the Lender may reasonably require in favour of the Lender or its nominee(s):

4.1.1.1 to create, perfect and protect (including against any change in or revised interpretation of any law or regulation) the security created (or intended to be created) under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by this or any other deed or document or by law; or

4.1.1.2 to confer on the Lender security over any Relevant Contracts, Contract Proceeds or Insurance Proceeds of each Chargor located in any jurisdiction in terms which are valid and effective within such jurisdiction and are as nearly as possible equivalent or similar to the security intended to be conferred by or pursuant to this Deed; or

4.1.1.3 (in its absolute discretion) to facilitate the realisation of any of the Secured Assets; or

4.1.1.4 otherwise for enforcing the same or exercising any of the Lender's or Receiver's rights, powers, authorities or discretions under this Deed and in respect of any Secured Assets,

and each Chargor shall take all such action as is available to it (including the making of all filings and registrations and the payment of all fees and taxes) as may be necessary for the creation, perfection protection, maintenance or enhancement of any security conferred or intended to be conferred on the Lender pursuant to this Deed.

4.1.2 Any security document required to be executed by any Chargor pursuant to Clause 4.1.1 will be prepared at the cost of the respective Chargor, and will be in such form and will contain such provisions as the Lender may reasonably require.

5. REPRESENTATIONS AND WARRANTIES

Each Chargor represents and warrants to the Lender on the date of this Deed and on each subsequent date upon which the representations and warranties set out in the Facility Agreement are repeated and which falls during the Security Period as follows:

5.1 **Power and authorisation**

it has the power to enter into, execute and deliver this Deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this Deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations;

5.2 **Enforceable security**

this Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargors and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms;

5.3 **Priority of security**

the assignments and charges contained in Clause 3 (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such assignments and charges and those assets are not subject to any security other than the security created by this Deed;

5.4 **Relevant Contracts and Secured Assets**

- 5.4.1 each of the Relevant Contracts and Insurance Policies is in full force and effect and constitutes legal, valid, binding and enforceable obligations of each Chargor and the relevant Contract Parties or other parties to the Insurance Policies (as applicable);
- 5.4.2 it has not rescinded or otherwise terminated or novated any of the Relevant Contracts or Insurance Policies and there have been no amendments to, nor defaults (howsoever described) under, the Relevant Contracts or Insurance Policies;
- 5.4.3 it has not waived, compromised, assigned nor agreed to waive, compromise or assign any of its present or future rights, title or interest in and to any of the Relevant Contracts, the Contract Proceeds, the Insurance Policies or the Insurance Proceeds otherwise than as expressly permitted in this Deed;
- 5.4.4 no right of action has arisen in favour of any Chargor nor any Contract Party or other party to any Insurance Policy in each case in respect of any representation, breach of condition, breach of warranty or breach of any other express or implied term of any of the Relevant Contracts or Insurance Policies (as applicable);
- 5.4.5 it is not aware of any fact or circumstance or any term or condition of any of the Relevant Contracts which would or might prejudice or affect the ability of the Lender to enforce any of the Relevant Contracts nor to recover and retain the Contract Proceeds and the Insurance Proceeds;
- 5.4.6 the relevant Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them;
- 5.4.7 there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets;
- 5.4.8 there is no prohibition on assignment in any Insurance Policy or Relevant Contract (other than as disclosed to the Lender prior to the date of this Deed), and the entry into this Deed by the Chargors does not and will not constitute a breach of any Insurance Policy or Relevant Contract or any other agreement, instrument or obligation binding on the relevant Chargor or its assets;
- 5.4.9 it is the sole legal and beneficial owner of, and has good, valid and marketable title to the Secured Assets;
- 5.4.10 to the best of the relevant Chargor's knowledge, the debtors of the Secured Assets are not involved in insolvency, bankruptcy, composition, debt re-scheduling or similar proceedings at the time the sales contract is being entered into or performed by the relevant Chargor and the relevant Chargor is not aware

of any fact or circumstance involving the said debtors and suggesting that the said debtors could be involved in such proceedings in the near future;

- 5.4.11 any rights and benefits ancillary to the Secured Assets (including, but not limited to, retention of title clauses, pledges, payment guarantees, documentary credits issued by the said debtors, credit risk insurance policies, bills of exchange, promissory notes and the like) the benefit of which constitute Contract Proceeds are valid and enforceable against their respective obligors; and
- 5.4.12 the bills of lading remitted to the Lender for the Financed Cargo shipped to the said debtors constitute the only existing set of originals and have not previously been pledged, mortgaged or otherwise encumbered in favour of any third party.

6. UNDERTAKINGS

Each Chargor undertakes to the Lender in the terms of the following provisions of this Clause 6, all such undertakings to commence on the date of this Deed and to continue throughout the Security Period:

6.1 Perform

It will at all times comply with the terms (express or implied) of this Deed and of all contracts relating to its Secured Obligations (including, but not limited to, all Relevant Contracts and Insurance Policies).

6.2 Not to jeopardise security

It will not do anything or allow anything to be done which may in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted by this Deed or the priority of its ranking as expressed in this Deed.

6.3 Collection of Contract Proceeds, etc.

- 6.3.1 Unless Clause 6.3.2 below applies, it will direct all Contract Proceeds and, all debtors of all Secured Assets (and to that effect specify in its invoices) to exclusively pay to the relevant Chargor's account with the Lender (or any other account as instructed by the Lender).
- 6.3.2 Where a Financed Cargo has been financed by more than one financier, it may direct that the relevant Contract Proceeds in relation to that Financed Cargo be paid to an account held by it with the financier who has provided the greatest proportion of financing in relation to that Financed Cargo, provided however that it shall immediately upon receipt of such Contract Proceeds into such other account, transfer such proportion of those Contract Proceeds which corresponds to the Lender's proportion of financing in relation to that Financed Cargo into the Collection Account and shall, until such time as that transfer has been effected, hold the relevant Contract Proceeds on trust for the Lender.

6.4 Relevant Contracts

It will:

- 6.4.1 perform all its obligations under the Relevant Contracts in a diligent and timely manner;
- 6.4.2 not rescind, terminate, novate or permit rescission, termination or novation of the Relevant Contracts nor make or agree to make any amendments or modifications to any of the Relevant Contracts or waive or compromise any of its rights under any of the Relevant Contracts nor release any Contract Party from its obligations under any of the Relevant Contracts except in any case with the prior written consent of the Lender; and
- 6.4.3 promptly inform the Lender of any material disputes relating to the Relevant Contracts.

6.5 Deposit of documents

It will promptly at the Lender's request deposit with the Lender (or as the Lender directs):

- 6.5.1 all deeds and documents of title relating to any Financed Cargo, the Relevant Contracts or the Contract Proceeds including any other deeds or documents necessary or desirable to assist the Lender to register or enforce the security created by this Deed;
- 6.5.2 to the extent possible, the originals of all Insurance Policies and copies of any correspondence with or notices to or from insurers or brokers relating to the Insurance Policies; and
- 6.5.3 all such other documents relating to the Secured Assets as the Lender may from time to time reasonably require.

6.6 **Power to remedy**

It agrees that if it fails to comply with any of the covenants and undertakings set out or referred to in Clause 6.1 (*Perform*) to Clause 6.5 (*Deposit of documents*) (inclusive) it will allow (and hereby irrevocably authorises) the Lender and/or such persons as the Lender nominates to take such action (including the making of payments) on behalf of the relevant Chargor as is necessary to ensure that such covenants are complied with.

6.7 **Expenses**

It agrees to pay all Expenses on demand and that if it does not do so, the Expenses will bear Interest at the Default Rate from and including the date of demand to and including the date of actual payment.

6.8 **Indemnity**

It agrees to indemnify the Lender and will keep the Lender indemnified against all losses and Expenses incurred by the Lender as a result of a breach by such Chargor of its obligations under Clause 6.1 (*Perform*) to Clause 6.5 (*Deposit of documents*) (inclusive) and in connection with the exercise by the Lender of its rights contained in Clause 6.6 (*Power to remedy*). All sums which are the subject of this indemnity will be payable by the relevant Chargor to the Lender on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded with calendar monthly rests.

7. **ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Lender and any Receiver exercisable on the date of this Deed, but, as between the Lender and each Chargor, the power of sale shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from a Chargor to the Lender for the appointment of a Receiver, in which case it shall be exercisable at any time following the making of such request).

8. **ENFORCEMENT OF SECURITY**

- 8.1 At any time after the security constituted by this Deed becomes enforceable in accordance with Clause 7 (*Enforceability*), the Lender may without further notice:
 - 8.1.1 appoint one or more than one Receiver in respect of the Secured Assets or any of them and if more than one Receiver is appointed the Receiver may act jointly and severally or individually; or
 - 8.1.2 take possession of the Secured Assets; or
 - 8.1.3 in its absolute discretion enforce all or any part of the security created by this Deed in such other lawful manner as it thinks fit.
- 8.2 The Lender may remove the Receiver and appoint another Receiver and the Lender may also appoint an alternative or additional Receiver.
- 8.3 The Receiver will, so far as the law permits, be the agent of each Chargor or such of them in respect of which or whose Secured Assets it has been appointed and each Chargor (and not its Receiver) will be responsible for the acts or defaults of its Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of such Receiver.

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- 8.4 The powers of the Receiver will continue in full force and effect following the liquidation of any Chargor.
- 8.5 The remuneration of the Receiver may be fixed by the Lender but will be payable by the relevant Chargors. The amount of the remuneration will form part of the Secured Obligations.
- 8.6 The Receiver will have the power on behalf and at the cost of the relevant Chargor:
- 8.6.1 to do or omit to do anything which it considers appropriate in relation to the Secured Assets; and
 - 8.6.2 to exercise all or any of the powers conferred on the Receiver or the Lender under this Deed or conferred upon administrative receivers by the Insolvency Act (even if it is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if it is not appointed under the LPA or such other statutory provision).
- 8.7 Without prejudice to the general powers set out in Clause 8.6 above, a Receiver will also have the powers and discretions set out in Schedule 4 (*Receiver's specific powers*).
- 8.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any security or other preferential claim affecting the Secured Assets or any of them which ranks in priority to the security created by this Deed and the holder of such prior security takes any steps to enforce such security, the Lender or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.
- 8.9 The Lender may, at any time after this Deed has become enforceable pursuant to Clause 7 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers authorities and discretions conferred on a Receiver by this Deed, whether as attorney of any Chargor or otherwise and whether or not a Receiver has been appointed.
- 8.10 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this Deed.

9. APPLICATION OF PROCEEDS

9.1 Recoveries by Receiver

The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying, in the following order of priority:

- 9.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- 9.1.2 any Expenses of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, taxes, rates and outgoings whatever affecting Secured Assets, all premiums on Insurance Policies properly payable under this Deed or any applicable statute, the cost of executing necessary or proper repairs to Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;
- 9.1.3 the Secured Obligations of such Chargor or whose Secured Assets in respect of which it has been appointed, in accordance with the provisions of the Facility Agreement and otherwise in such order as the Lender may determine; and
- 9.1.4 the claims of those persons entitled to any surplus.

9.2 Right of appropriation

The Lender is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by any Chargor.

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9.3 Placement of monies received

The Lender may place (for such time as it thinks prudent) any money received by it pursuant to this Deed to the credit of the overdraft account of the relevant Chargor held with the Lender in connection with the Facility Agreement for so long and in such manner as the Lender may from time to time determine. Money so credited to any such overdraft account shall be netted against, and applied in and towards the discharge of, any debit balance on the relevant overdraft account and any remaining credit balance, in whole or in parts, may be applied by the Lender (without being obliged to do so) in or towards the discharge of the other Secured Obligations of the relevant Chargor at such time(s) as the Lender thinks prudent. For the avoidance of doubt, interest accrues on amounts credited to such overdraft accounts and all rights and powers in respect of such overdraft accounts may be exercised by the relevant Chargor, in each case in accordance with and subject to the applicable agreements and arrangements between the relevant Chargor and the Lender relating to such overdraft accounts.

10. PROTECTION OF THIRD PARTIES

10.1 No duty to enquire

A buyer from, lessee or licensee or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which it has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this Deed.

10.2 Receipt conclusive

The receipt of the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

11. PROTECTION OF LENDER

11.1 Lender's receipts

The Lender shall not be obliged to account to any Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or who the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

11.2 Exclusion of liability

11.2.1 No Enforcement Party will be liable to any Chargor for any expense, loss liability or damage incurred by any Chargor arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

11.2.2 No Chargor may take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.

11.2.3 Any officer, employee or agent of any Enforcement Party may rely on this Clause 11.2 under the Third Parties Act.

11.3 Chargors' indemnity

Each Chargor agrees with the Lender to indemnify the Lender and any Receiver or Delegate on demand against any costs, loss or liability incurred by any of them in respect of:

11.3.1 any exercise of the powers of the Lender or the Receiver or any attempt or failure to exercise those powers in connection with such Chargor; and

11.3.2 anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed, in each case, in connection with such Chargor.

12. POWER OF ATTORNEY

12.1 Each Chargor, by way of security and to more fully secure the performance of its obligations under this Deed, hereby irrevocably appoints the Lender and separately any nominee and/or any receiver to be its attorney (with full power to appoint substitutes and to delegate) with power in its name and on its behalf, and as its act and deed or otherwise (whether or not a receiver or administrator has been appointed) to:

12.1.1 do anything which that Chargor is obliged to do (but has not done within the time period provided for in this Deed) in accordance with this Deed, including to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document; and

12.1.2 following the occurrence of an Event of Default, enable the Lender or any such nominee and/or receiver to exercise (or to delegate) all or any of the rights conferred on it by this Deed or by statute in relation to this Deed or the Pledged Assets charged, or purported to be charged, by it.

12.2 Each Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to his appointment under this clause.

13. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**13.1 Application of statutory covenants**

The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind each Chargor only if, in any case, the relevant covenant imposes upon each Chargor a burden, liability or obligation that would not otherwise arise under this Deed.

13.2 Extension of powers of sale, etc.

13.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.

13.2.2 The Lender and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this Deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this Deed, those contained in this Deed shall prevail.

13.3 LPA provisions relating to appointment of Receiver

Sections 103 and 109(1) of the LPA shall not apply to this Deed.

13.4 Application of proceeds

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this Deed.

14. OTHER MISCELLANEOUS PROVISIONS**14.1 Powers, rights and remedies cumulative**

The powers, rights and remedies provided in this Deed are in addition to (and not instead of), powers, rights and remedies under law.

14.2 Exercise of powers, rights and remedies

14.2.1 If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

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- 14.2.2 The provisions of this Deed will not be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any other Chargor's or other person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any obligation of any other Chargor or person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making or termination of any other deed or agreement; (e) any amendment, novation, restatement or substitution of, or any supplement to, any other deed or agreement; (f) any increase or reduction in the amount of any other Chargor's or person's indebtedness; (g) any person taking or omitting to take any step in relation to (i) any other Chargor or any other person, (ii) any of the Secured Obligations, (iii) any security, guarantee, indemnity or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of such Chargor.

14.3 Discretion

- 14.3.1 The Lender may decide:

14.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this Deed and (ii) to exercise any other right it might have in respect of each Chargor (or otherwise); and

14.3.1.2 when and how to apply any payments and distributions received for its own account under this Deed,

and each Chargor has no right to control or restrict the Lender's exercise of this discretion.

- 14.3.2 No provision of this Deed will interfere with the Lender's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated or as required by law.

14.4 Set-off and combination of accounts

- 14.4.1 No right of set-off or counterclaim may be exercised by any Chargor in respect of any payment due to the Lender under this Deed.

- 14.4.2 The Lender may at any time after this Deed has become enforceable and without notice to any Chargor:

14.4.2.1 combine or consolidate all or any of any Chargor's then existing accounts with, and liabilities to, the Lender;

14.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

14.4.2.3 set-off any other obligation owed by the Lender to any Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Lender is to notify the relevant Chargors in writing that such a transfer has been made.

- 14.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Lender may convert either amount (or both) at any reasonable time and at any reasonable rate.

14.5 Power to establish new account

If the Lender receives notice of a subsequent security relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Lender does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

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14.6 Retention of documents

The Lender may retain any document delivered to it pursuant to Clause 6.5 (*Deposit of documents*) or otherwise until the Discharge Date and if, for any reason it ceases to hold any such document before such time, it may by notice to the relevant Chargor(s) require that the relevant document be redelivered to it and the relevant Chargor(s) must immediately comply (or procure compliance) with such notice.

14.7 Execution of this Deed - counterparts

If the Parties execute this Deed in separate counterparts, this Deed will take effect as if they had all executed a single copy.

14.8 Execution of this Deed - formalities

The Parties intend this document to take effect as a deed, even though the Lender only executes it under hand.

14.9 Partial invalidity

14.9.1 If, at any time, any provision of this Deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this Deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

14.9.2 If any Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this Deed (or under the relevant part).

14.10 Conflict

If there is any conflict between the provisions of the Facility Agreement and the provisions of this Deed, the provisions of the Facility Agreement shall prevail.

14.11 Other security

This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Lender may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.

14.12 No assignment by Chargor

No Chargor shall assign, transfer or grant a security interest, trust or similar over or in, any of its rights, or transfer any of its rights or obligations (or purport to do so), under this Deed.

14.13 Transfer by Lender

14.13.1 The Lender may at any time assign, novate or otherwise deal with any of the Lender's rights, interest and/or obligations under or in connection with this Deed to the same extent as it is entitled to do so under the terms of the Facility Agreement.

14.13.2 Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been a Party.

14.14 Avoidance of settlements and other matters

14.14.1 Any payment made by a Chargor, or settlement or discharge between any Chargor and the Lender, is conditional upon no security or payment to the Lender by such Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Lender's other rights under this Deed) the Lender shall be entitled to recover from any Chargor the value which the Lender has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

- 14.14.2 If the Lender, acting reasonably, considers that any amount paid by any Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in Clause 14.14.1, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.

14.15 Release of security

On the Discharge Date (but subject to Clause 14.14 (*Avoidance of settlements and other matters*)) the Lender shall at the request and cost of each Chargor execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the security constituted hereby or pursuant hereto.

14.16 Additional currency provisions

- 14.16.1 All monies received or held by the Lender or any Receiver under this Deed may be converted into such other currency as the Lender considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Lender's set rate of exchange then prevailing for purchasing that other currency with the existing currency.
- 14.16.2 No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargors in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which the obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency the Lender shall have a further separate cause of action against the Chargors and shall be entitled to enforce the security constituted by this Deed to recover the amount of the shortfall.

14.17 Liability of Chargor 1

Notwithstanding any other provision of any Finance Document, Chargor 1 shall not be liable for the obligations of Chargor 2 under this Deed.

15. COMMUNICATIONS

Clause 14.9 (*Communications*) of the Facility Agreement is incorporated into this Deed as if such clause was set out in full.

16. GOVERNING LAW

16.1 Governing law

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

16.2 Jurisdiction

- 16.2.1 The courts of England and Wales 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 any non-contractual obligations arising out of or in connection with it (a "**Dispute**"). Each Party agrees that the courts of England and Wales are the most appropriate and convenient courts to settle any Dispute and accordingly neither Party will argue to the contrary. This Clause 16.2.1 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party will be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.
- 16.2.2 Each Chargor irrevocably appoints Gerald UK Limited a private limited company incorporated under the laws of England (Company No. 03961277) with its offices registered at Third Floor, One Strand, Grand Buildings, and Trafalgar Square, London, England, WC2N5HR, as its agent for service of process in relation to any proceedings before the courts of England and Wales in connection with this Deed

and agrees that any failure to notify it of the process will not invalidate the proceedings concerned.

IN WITNESS whereof this Deed has been duly executed and delivered as a deed on the date first above written.



SCHEDULE 0
Form of Charging Confirmation

To: UniCredit Bank AG
Attn.: [•]
Arabellastrasse 14
81925 Munich
Germany

Dated: [date]

Dear Sirs,

Deed of Assignment dated [date] made between (1) UniCredit Bank AG as lender and (2) Gerald Metals SA and Gerald UK Limited as chargors (the "Deed")

1. We hereby attach an updated schedule of contracts and insurance proceeds which are assigned pursuant Clause 3.1 (*Security Assignment*) of the Deed and which we designate as "Relevant Contracts", "Contract Proceeds", "Insurance Policies" and "Insurance Proceeds" (as applicable) under the Deed.
2. The terms and definitions contained in the Deed are incorporated into this confirmation and in the event of any conflict in the terms of the Deed and this confirmation, the terms of the Deed shall prevail.
3. This confirmation is made pursuant to the requirements of Clause 3.2 (*Notice of new Relevant Contract, Contract Proceeds, Insurance Policies and Insurance Proceeds*) of the Deed.
4. We designate this confirmation as a Finance Document.

Yours faithfully

[Chargor(s)]

SCHEDULE

	Brief description of Relevant Contract	Date of Relevant Contract	Parties to Relevant Contract (Include addresses for service of notices of those parties who are not parties to the Deed)	Contract Proceeds
1				
2				
3				
4				

	Insurance policy number and date of expiry	Name and address of insurer	Name and address of broker	Brief description of assets insured	Insurance Proceeds
1.	[number] [date of expiry]				
2.	[number] [date of expiry]				
3.	[number] [date of expiry]				
4.	[number] [date of expiry]				
5.	[number] [date of expiry]				

*Not required if policies are annually renewable
Dated [date]

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SCHEDULE 0

Form of notice and acknowledgement of assignment of Relevant Contracts

Part 1

Form of notice of assignment

To: [name and address of Contract Party]

Dated: [date]

Dear Sirs,

Deed of Assignment dated [date] made between (1) UniCredit Bank AG as lender (the "Lender") and (2) Gerald Metals SA and Gerald UK Limited as chargors (the "Deed")

[insert details of relevant Relevant Contract] (the "Contract") made between (1) [Chargor] (the "Chargor") and (2) [insert name of counterparty]

We, [Chargor], hereby notify you that under the Deed the Chargor has assigned to the Lender as first priority assignee over all of the Chargor's rights, title and interest in the Contract and in the proceeds of the Contract from time to time in whatever form they may be including, without limitation, all monies receivable by the Chargor under, or otherwise arising out of, or evidenced by, the Contract as security for certain obligations now or hereafter owed by the Chargor to the Lender.

We further notify and irrevocably and unconditionally instruct and authorise you that:

1. the Chargor may not agree to amend, modify or terminate the Contract without the prior written consent of the Lender;
2. the Deed provides that you may not be released from your obligations under the Contract, nor may any rights of the Chargor be waived, in any case without the prior consent of the Lender being obtained;
3. subject to paragraph 1 above and the obligation to pay monies in accordance with the instructions in paragraph 6 below, the Deed provides that you may continue to deal with the Chargor in relation to the Contract until you receive written notice to the contrary from the Lender. Thereafter the Chargor will cease to have any right to deal with you in relation to the Contract and therefore from that time you should deal only with the Lender;
4. notwithstanding the foregoing the Chargor shall continue to be liable for the performance and discharge of all obligations under the Contract in accordance with its terms and the Deed provides that the Lender shall be under no obligation of any kind in respect of the Contract or such obligations;
5. you are authorised to disclose information in relation to the Contract to the Lender on request without any enquiry by you as to the justification for such disclosure or reference to or further authority from the Chargor;
6. you must pay or release all monies to which the Chargor is entitled under the Contract direct to the Lender (and not to the Chargor) unless the Lender otherwise agrees in writing to the following account:
 - (a) Account name: [•]
 - (b) Account number: [•]
 - (c) IBAN or sort code: [•]
7. you must supply copies of all notices and other information under the Contract to the Lender; and
8. the provisions of this notice may only be revoked with the written consent of the Lender.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to the Chargor) by way of confirmation that:

- A. you have not received notice that the Chargor has assigned its rights under the Contract to a third party or created any other interest (whether by way or security or otherwise) in the Contract in favour of a third party; and
- B. you agree to the terms set out in this notice and to act in accordance with its provisions.

The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by the law of England and Wales.

Yours faithfully,

for and on behalf of

[Chargor]



Part 2
Form of acknowledgement of assignment
[On the letterhead of the Contract Party]

To: UniCredit Bank AG
Attn.: [•]
Arabellastrasse 14
81925 Munich
Germany

Copy to: [name and addresses of Chargor]

Dated: [date]

Dear Sirs,

Deed of Assignment dated [date] made between (1) UniCredit Bank AG as lender (the "Lender") and (2) Gerald Metals SA and Gerald UK Limited as chargors (the "Deed")

We confirm receipt from [name of Chargor] (the "**Chargor**") of a notice (the "**Notice**") dated [insert date] of an assignment, by way of security, of all the Chargor's rights under [insert details of relevant Relevant Contract].

We hereby acknowledge receipt of the above notice and give the confirmation and confirm our agreement in accordance with paragraphs A and B of the Notice.

Yours faithfully,

Executed as a deed by:
for and on behalf of [name of Contract Party]

Executed as a deed by:
for and on behalf of [name of Contract Party]

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SCHEDULE 3**Form of notice and acknowledgement of assignment of Insurance Proceeds****Part 1****Form of notice of assignment**

To: [name and address of insurer]

Re: The policies of insurance referred to in the Schedule below (the "Policies")

We, [Chargor] (the "**Chargor**"), hereby give you notice that, by a Deed of Assignment dated [insert date] (the "**Deed**") and made by, amongst others, the Chargor in favour of UniCredit Bank AG (the "**Lender**") the Chargor has assigned to the Lender, as first priority assignee all its rights title and interest in the proceeds of any insurance claim together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of the Chargor's ownership of or interest in the Policies (as set out in the Schedule) and all interest on any of the foregoing (the "**Insurance Proceeds**") as security for certain obligations now or hereafter owed by the Chargor to the Lender.

Such Insurance Proceeds, if and when payable, should be paid direct to the Lender at the following account:

- (a) Account name: [•]
- (b) Account number: [•]
- (c) IBAN or sort code: [•]

We hereby irrevocably and unconditionally authorise you:

- 1. to note the Lender's interest as first assignee and sole loss payee of the Insurance Proceeds; and
- 2. to give the undertakings, in the form specified below, to the Lender and to act on the instructions of the Lender in the manner provided in such undertakings without any further reference to or authorisation from us.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to the Chargor) by way of acknowledgement of this notice and confirmation that you:

- A. agree to the terms set out in this notice and to act in accordance with its provisions; and
- B. undertake to disclose to the Lender without any reference to or further authority from the Chargor such information relating to the Policies as the Lender may at any time reasonably request;
- C. undertake not to cancel or decline renewal of any of the Policies without giving the Lender 30 days prior written notice; and
- D. undertake not to cancel the Policies, nor allow the Policies to lapse, at the request of the Chargor, without first obtaining the Lender's consent.

For and on behalf of:
[Chargor]

By:

THE SCHEDULE

The Policies*

*To be completed by the Chargor and approved by the Lender and to include all relevant policies with the named Insurer

	Policy number	Name and address of insurer	Name and address of broker	Brief description of assets insured	Date of expiry of policy*
1.	[number]				
2.	[number]				
3.	[number]				
4.	[number]				
5.	[number]				

*Not required if policies are annually renewable
Dated [date]



Part 2
Form of acknowledgement of assignment

[On the letterhead of the insurer]

[to be endorsed on copy notice]

To: UniCredit Bank AG
Attn.: [•]
Arabellastrasse 14
81925 Munich
Germany

Copy to: [name and address of Chargor]

Dated: [date]

Dear Sirs,

Deed of Assignment dated [date] made between (1) UniCredit Bank AG as lender (the "Lender") and (2) Gerald Metals SA and Gerald UK Limited as chargors (the "Deed")

We confirm receipt from [name of Chargor] (the "**Chargor**") of a notice (the "**Notice**") dated [insert date] of an assignment, by way of security, of all the Chargor's rights in the Insurance Proceeds as defined in the Notice.

We hereby acknowledge receipt of the Notice and confirm our agreement to the matters set out in paragraphs A to D (inclusive) of that Notice.

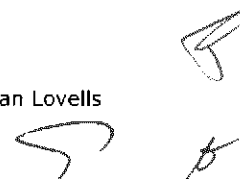
Yours faithfully,

Executed as a deed by:

for and on behalf of [name of insurer]

Executed as a deed by:

for and on behalf of [name of insurer]

Handwritten signatures and initials in the bottom right corner, including a large stylized 'S' and other marks.

SCHEDULE 4**Receiver's specific powers**

The Receiver will have full power and authority:

1. **POSSESSION**

- 1.1 to enter upon, take possession of the Secured Assets of the relevant Chargor(s);
- 1.2 to collect and get in all rents, fees, charges or other income of the Secured Assets of the relevant Chargor(s);

2. **SALE AND DISPOSAL**

without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets of the relevant Chargor(s) or any property acquired in exercise of its powers under this Deed;

3. **BORROWING**

for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any losses or Expenses which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Lender or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this security or not;

4. **EMPLOYMENT ETC.**

to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the relevant Chargor(s) prior to his appointment;

5. **LEGAL ACTIONS AND COMPROMISES**

- 5.1 in the name of the relevant Chargor(s), to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to such Chargor, the business of the relevant Chargor(s) or the Secured Assets as in any case he shall think fit;
- 5.2 to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the relevant Chargor(s) or relating in any way to the Secured Assets;

6. **RECEIPTS**

to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;

7. **CONTRACTS**

to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the relevant Chargor(s) or the Lender;

8. **SUPPLIES**

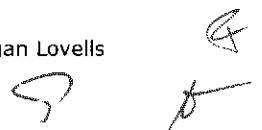
to purchase goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;

9. **INSURANCES AND BONDS**

to insure the Secured Assets of the relevant Chargor(s), any assets acquired by the Receiver in exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver shall think fit, and obtain bonds and give indemnities and security to any bondsmen;

10. **FORM COMPANY**

- 10.1 to promote or establish any company or to acquire shares in any company (whether as a subsidiary of the relevant Chargor(s) or otherwise) to facilitate the exercise of his powers under this Deed;
- 10.2 to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in exercise of his powers;
- 10.3 to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;
11. **TRANSACTION**
to carry into effect and complete any transaction;
12. **REDEEM SECURITY**
to redeem any prior security or preferential claim (or procure the transfer of such security or preferential claim to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on any relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver; and
13. **GENERAL**
either in the name of the relevant Chargor(s) or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of its Secured Assets.

Handwritten signatures and initials in the bottom right corner, including a stylized 'H' and 'L' and a signature that appears to be 'G'.

EXECUTION


This Deed is executed by each Party as a deed and delivered on the date stated at the beginning of this Deed.

The Lender

**EXECUTED and DELIVERED as a DEED by
UniCredit Bank AG**

By: 

Name: *DAVID WEHRHANN*
Title: *AD*



Name: *N. Oberle*
Title: *DIRECTOR*

The Chargors

**EXECUTED and DELIVERED as a DEED by
Gerald Metals SA**

By: 

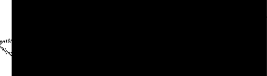
Name: *Florian Kaufmann*
Title: *Authorized Signatory*



Name:
Title:

each being persons who, in accordance with the laws of Switzerland, are acting under the authority of that company

**EXECUTED and DELIVERED as a DEED by
Gerald UK Limited**

By: 

Name: *Florian Kaufmann*
Title: *Director*



Name:
Title: *Director/ Secretary*