



Registration of a Charge

Company Name: **XANDOR AUTOMOTIVE CANNING BRETT LTD**

Company Number: **03984537**



Received for filing in Electronic Format on the: **10/05/2023**

XC38INQ0

Details of Charge

Date of creation: **05/05/2023**

Charge code: **0398 4537 0005**

Persons entitled: **W.H. SMITH & SONS HOLDINGS LIMITED**

Brief description:

Contains fixed charge(s).

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: **FREETHS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3984537

Charge code: 0398 4537 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 5th May 2023 and created by XANDOR AUTOMOTIVE CANNING BRETT LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th May 2023 .

Given at Companies House, Cardiff on 12th May 2023

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 5 May 2023

- (1) **XANDOR AUTOMOTIVE CANNING BRETT LTD
(AS CHARGOR)**

- (2) **W.H. SMITH & SONS HOLDINGS LIMITED (AS
LENDER)**

CHATTELS MORTGAGE

Contents

Clause

1. DEFINITIONS AND INTERPRETATION	2
2. COVENANT TO PAY	7
3. GRANT OF SECURITY	7
4. LIABILITY OF THE CHARGOR	8
5. REPRESENTATIONS AND WARRANTIES	9
6. COVENANTS	11
7. POWERS OF THE LENDER	16
8. WHEN SECURITY BECOMES ENFORCEABLE	17
9. ENFORCEMENT OF SECURITY	17
10. RECEIVER	20
11. POWERS OF RECEIVER	20
12. DELEGATION	23
13. APPLICATION OF PROCEEDS	23
14. COSTS AND INDEMNITY	24
15. FURTHER ASSURANCE	25
16. POWER OF ATTORNEY	25
17. RELEASE	26
18. ASSIGNMENT AND TRANSFER	26
19. SET-OFF	27
20. AMENDMENTS, WAIVERS AND CONSENTS	27
21. PARTIAL INVALIDITY	28
22. COUNTERPARTS	28
23. THIRD PARTY RIGHTS	28
24. FURTHER PROVISIONS	28
25. NOTICES	29
26. GOVERNING LAW AND JURISDICTION	30

SCHEDULE

SCHEDULE 1	CHATELS	32
SCHEDULE 2	RELEVANT AGREEMENTS	36

This deed is dated

5 May 2023

Parties

- (1) XANDOR AUTOMOTIVE CANNING BRETT LTD**, incorporated and registered in England and Wales with registered number 03984537 whose registered office is at Pontardawe Industrial Estate, Pontardawe, Swansea, Wales, SA8 4EP (the **Chargor**); and
- (2) W.H. SMITH & SONS HOLDINGS LIMITED**, incorporated and registered in England and Wales with registered number 03411415 whose registered office is at Water Orton Lane Minworth, Sutton Coldfield, West Midlands, B76 9BG (the **Lender**).

Background

- (a) The Lender agreed, under the Facility Agreement, to provide the Borrower with a loan facility on a secured basis.
- (b) Under this deed the Chargor provides security to the Lender for the loan facility made available under the Facility Agreement.
- (c) It is intended that this deed takes effect as a deed notwithstanding the fact that a party may only execute this deed under hand.

Agreed terms

1. Definitions and interpretation

1.2 Definitions

Terms defined in the Facility Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

Borrower: WHS Technical Solutions Ltd (registered number 14829504).

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

Chattels: the equipment, tools, plant, machinery, vehicles, apparatus chattels or other tangible movable property described in Schedule 1 (including any component parts of those assets from time to time held by the Chargor (whether or not attached to those assets)), together with all additions, alterations, substitutions, replacements, renewals or modifications of or to those assets from time to time, and all accessories to those assets from time to time (including maintenance and other records, manuals, handbooks, data, drawings and schematics relating to those assets or documents relating to warranties and patent indemnities given by manufacturers or suppliers of those assets).

Delegate: any person appointed by the Lender or any Receiver pursuant to clause 12, and any person appointed as attorney of the Lender, Receiver or Delegate.

Environment: the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes insofar as they relate to or apply to the Environment.

Environmental Licence: any authorisation, permit or licence necessary under Environmental Law in respect of any of the Secured Assets.

Event of Default: has the meaning given to that term in the Facility Agreement.

Excluded Property: all the assets, property, rights, benefits, interests and undertaking of the Chargor which are, or are expressed to be:

- (a) subject to any Security created by, or pursuant to the Factofrance Security Documents to which the Chargor is a party; and
- (b) assigned to Factofrance pursuant to the terms any factoring agreement (or similar agreement howsoever described) entered into by the Chargor with Factofrance from time to time.

Facility Agreement: the facility agreement dated on or around the date of this deed between the Borrower and the Lender for the provision of the loan facility secured by this deed.

Factofrance: Factofrance S.A. (registered in France with number B063 802 466).

Factofrance Security Documents:

- (a) the charge over debts dated 2.8.2021 between the Chargor and Factofrance; and
- (b) any other document evidencing or creating Security over any asset to secure any obligation of the Chargor to Factofrance,

has the meaning given to that term in the Facility Agreement.

Finance Document: has the meaning given to that term in the Facility Agreement.

Insurance Policies: all the contracts and policies of insurance effected or maintained from time to time in respect of the Chattels.

LPA 1925: the Law of Property Act 1925.

Obligor: has the meaning given to that term in the Facility Agreement.

Permitted Disposal: has the meaning given to that term in the Facility Agreement.

Permitted Security: has the meaning given to that term in the Facility Agreement.

Receiver: a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 10.

Relevant Agreement: means:

- (a) each agreement for the maintenance, repair or upkeep of the Chattels and any guarantee, warranty or security for the performance of any such agreement; and
- (b) all other contracts, guarantees, appointments, warranties, indemnities and other documents relating to the Chattels to which the Chargor is a party, which are in its favour or of which it has the benefit,

the details of which (if any) are set out in Schedule 2.

Rights: any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

Secured Assets: all the assets, property and undertaking of the Chargor which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

Secured Liabilities: all present and future obligations and liabilities of each Obligor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with each Finance Document.

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 Lender is 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.

1.3 Interpretation

In this deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this agreement;

- (b) a **person** includes 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);
- (c) a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
- (d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (e) a reference to a party, the Borrower or any Obligor shall include that party's, the Borrower's or that Obligor's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, 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 a time of day is to London time;
- (i) a reference to **writing** or **written** includes email;
- (j) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (k) a reference to a **Finance Document** (or any provision of it) or to any other agreement or document referred to in any Finance Document is a reference to that Finance Document, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this agreement) from time to time;

- (l) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (m) any words following the terms **including, include, in particular, for example** 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;
- (n) a reference to **directly or indirectly** means (without limitation) either alone or jointly with any other person, whether on their own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- (o) a reference to an **amendment** includes a restatement, novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (p) a reference to **assets** includes present and future properties and assets, undertakings, revenues, rights and benefits of every description;
- (q) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- (r) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been waived by the Lender;
- (s) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- (t) a reference to a **disposal** of any asset, undertaking or business includes a sale, lease, licence, transfer, loan or other disposal by a person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions); and
- (u) 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.

1.4 Clawback

If the Lender considers that an amount paid by the Chargor, the Borrower or any Obligor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower, an Obligor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.5 Schedules

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

2. Covenant to pay

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

3. Grant of security

3.1 Legal mortgage

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of first legal mortgage, the Chattels.

3.2 Fixed charge

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

- (a) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims, and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3;
- (b) all its rights in respect of each Relevant Agreement, to the extent not effectively assigned under clause 3.3;
- (c) the benefit of all other contracts, guarantees, appointments and warranties relating to the Chattels and other documents which relate to the Chattels to which the Chargor is a party or which are in its favour or of which it has the benefit, to the extent not effectively assigned under clause 3.3; and
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the use of any Secured Assets, and all rights in connection with them.

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 Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy;
- (b) the benefit of each Relevant Agreement;
- (c) the benefit of all other contracts, guarantees, appointments and warranties relating to the Chattels and other documents which relate to the Chattels to which the Chargor is a party or which are in its favour or of which it has the benefit, to the extent not effectively assigned under clause 3.3(a) or clause 3.3(b); and

- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the use of any Secured Assets, and all rights in connection with them,

provided that nothing in this clause 3.3 shall constitute the Lender as mortgagee in possession.

3.4 Excluded Property

Notwithstanding the terms of clause 3.1 (*Legal mortgage*), clause 3.2 (*Fixed charge*) and clause 3.3 (*Assignment*), no Security created by the Chargor in favour of the Lender under those clauses shall apply or attach to any Excluded Property.

4. Liability of the Chargor and Lender's protections

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 that the Lender may now or after the date of this deed have from or against the Borrower, the Chargor or any other person in connection with the Secured Liabilities;
- (c) any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, the Chargor or any other person;
- (d) any termination, amendment, variation, novation, replacement or supplement of or to any of the Secured Liabilities including, without limitation, any change in the purpose of, any increase in or extension of the Secured Liabilities and any addition of new Secured Liabilities;
- (e) any grant of time, indulgence, waiver or concession to the Borrower, 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 Borrower, 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 Borrower, the Chargor or any other person in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Borrower, the Chargor or any other person;
or
- (i) any other act or omission that 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 Lender:

- (a) to take any action or obtain judgment in any court against the Borrower, the Obligor or any other person;
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower, an Obligor or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower, an Obligor 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 Lender that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, an Obligor, any liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Chargor under this deed but:

- (a) if any of the Rights is taken, exercised or received by the Chargor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Chargor on trust for the Lender for application in or towards the discharge of the Secured Liabilities under this deed; and
- (b) on demand by the Lender, the Chargor shall promptly transfer, assign or pay to the Lender all Rights and all monies from time to time held on trust by the Mortgagor under this clause 4.3.

5. Representations and warranties

5.1 Representations and warranties

The Chargor makes the representations and warranties set out in this clause 5 to the Lender.

5.2 Ownership of Secured Assets

The Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to the Secured Assets.

5.3 No Security

The Secured Assets are free from any Security Assets other than Permitted Security.

5.4 No adverse claims

The 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.

5.5 No fixing

None of the Chattels (or any part of them) is or will be treated as being fixed to any land, premises or other property.

5.6 No adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

5.7 No breach of laws

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

5.8 No interference in enjoyment

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

5.9 Avoidance of security

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

5.10 No prohibitions

There is no prohibition on assignment in any Insurance Policy or Relevant Agreement, and the entry into this deed by the Chargor does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

5.11 Environmental compliance

The Chargor has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

5.12 Enforceable security

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.

5.13 Times for making representations and warranties

The Chargor makes the representations and warranties set out in this clause 5 to the Lender on the date of this deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

6. Covenants

6.1 Negative pledge and disposal restrictions

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

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than 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, other than by way of a Permitted Disposal; or
- (c) create or grant (or purport to create or grant) any interest in any Secured Asset in favour of a third party other than Permitted Security.

6.2 Preservation of Secured Assets

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Secured Assets (except for expected fair wear and tear) or the effectiveness of the security created by this deed.

6.3 Relevant Agreements

- (a) The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of each Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets.
- (b) The Chargor shall not, unless the Lender agrees otherwise in writing:
 - (i) amend or vary or agree to any change in, or waive any requirement of or its rights under;
 - (ii) settle, compromise, terminate, rescind or discharge (except by performance); or
 - (iii) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with,
- (c) any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets.

6.4 Compliance with laws and regulations

- (a) The Chargor shall not, without the Lender'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 them 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) promptly 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.

6.5 Enforcement of rights

The Chargor shall use its best endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Chargor and forming part of the Secured Assets of the covenants and other obligations imposed on the Chargor's counterparties (including each counterparty in respect of a Relevant Agreement and 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 that the Lender may require from time to time.

6.6 Notice of misrepresentations and breaches

The Chargor shall, promptly on becoming aware of any of the same, notify the Lender in writing of:

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

6.7 Notices to be given by Chargor

The Chargor shall if so required by the Lender:

- (a) on the execution of this deed and as so requested by the Lender from time to time:
 - (i) give notice to the relevant insurers of the assignment of the Chargor's rights and interest in, and under, each Insurance Policy (including the proceeds of any claims under that Insurance Policy) pursuant to clause 3.3(a); and
 - (ii) procure that each insurer provides to the Lender promptly an acknowledgement of the notice of the Lender's interest;
- (b) on the execution of this deed and as so requested by the Lender from time to time:

- (i) give notice to the other parties to each Relevant Agreement of the assignment of the Chargor's rights and interest in and under that Relevant Agreement pursuant to clause 3.3(b); and
 - (ii) procure that each addressee of any such notice provides to the Lender promptly an acknowledgement of the notice of the Lender's interest;
- (c) on the execution of this deed and as so requested by the Lender from time to time:
 - (i) give notice to the other parties to each other contract, guarantee, appointment, warranty or authorisation relating to the Chattels and any other document to which the Chargor is a party of the assignment of the Chargor's rights and interest in and under it pursuant to clause 3.3(c) or clause 3.3(d); and
 - (ii) procure that each addressee of any such notice provides to the Lender promptly an acknowledgement of the notice of the Lender's interest to the Lender.
- (d) obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 6.7.

6.8 Notice of mortgage

The Chargor:

- (a) shall, if so requested by the Lender, affix to and maintain on each Chattel in a conspicuous place, a clearly legible identification plate containing the following wording:
 "NOTICE OF LEGAL MORTGAGE

 This [DESCRIPTION OF ITEM] and all additions to it [and ancillary equipment] are subject to a legal mortgage dated [DATE] in favour of [LENDER]."
- (b) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 6.8(a).

6.9 Maintenance of Chattels

The Chargor shall:

- (a) at its own expense, maintain each Chattel 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;
- (b) at its own expense, renew and replace any parts of the Chattels when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value;
- (c) keep or procure to be kept accurate, complete and up to date records of all repairs, servicing and maintenance carried out on the Chattels;

- (d) permit the Lender, or such persons as it may nominate, at all reasonable times and on reasonable notice to enter on any premises of the Chargor to effect such maintenance or repairs to the Chattels as the Lender or its nominee considers necessary; and
- (e) not permit any Chattel to be:
 - (i) used or handled, other than by properly qualified and trained persons;
 - (ii) modified, upgraded, supplemented or altered other than for the purpose of effecting maintenance or repairs permitted by this deed; or
- (f) to be overloaded or used for any purpose for which it is not designed or reasonably suitable or in any manner which would invalidate or otherwise prejudice any of the Insurance Policies.

6.10 Documents

The Chargor shall, if so required by the Lender on the execution of this deed, deposit with the Lender and the Lender shall, for the duration the Security Period, be entitled to hold all:

- (a) deeds and documents of title and log books relating to the Secured Assets that are in the possession or control of the Chargor and, if these are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of all deeds and documents of title and log books;
- (b) Insurance Policies; and
- (c) Relevant Agreements.

6.11 Information

The Chargor shall:

- (a) give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- (b) permit any persons designated by the Lender 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; and
- (c) promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

6.12 Insurance

- (a) The Chargor shall insure, and keep insured, the Secured Assets against:
 - (i) loss or damage by fire or terrorist acts, including any third party liability arising from such 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 Lender may reasonably require.
- (b) Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender, and must be for not less than the replacement value of or, if higher, the cost of reinstating the relevant Secured Assets.
- (c) The Chargor shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to the insurance required by clause 6.12(a).

6.13 No invalidation of insurance

The Chargor shall not do or omit to do, or permit to be done or omitted, any thing that may invalidate or otherwise prejudice any Insurance Policy as is required by clause 6.12(a).

6.14 Maintenance of interests in Secured Assets

The Chargor:

- (a) shall not, without the prior written consent of the Lender:
 - (i) grant, or agree to grant, any licence or lease affecting the whole or any part of any Secured Assets; or
 - (ii) in any other way dispose of, or agree to dispose of, surrender or create any legal or equitable interest in the whole or any part of any Secured Assets;
- (b) shall keep the Secured Assets (to the extent not otherwise in the possession of the Lender pursuant to clause 6.10) in its sole and exclusive possession at the location (if any) specified in Schedule 1 or at such other location as the Lender may consent in writing] and shall not take the Secured Assets, or allow them to be taken, out of England and Wales; and
- (c) shall, if required by the Lender, in the case of any Secured Assets located on leasehold premises, obtain evidence in writing from any lessor of such premises that it waives absolutely all and any rights it may have now or at any time over any such Secured Assets.

6.15 Annexation

The Chargor shall not, without the Lender's prior written consent, annex, fix or otherwise secure or allow any such annexation, fixing or securing of any Chattel to any premises, land or buildings if the result of such action or omission is that the Chattel, or any part of it, would or might become a fixture or fitting.

6.16 Registration restrictions

The Chargor shall procure that no person shall be registered as proprietor of any Chattel without the prior written consent of the Lender.

6.17 Environment

The Chargor shall, in respect of each Chattel:

- (a) comply in all material respects with all the requirements of Environmental Law; and
- (b) obtain and comply in all material respects with all Environmental Licences.

7. Powers of the Lender

7.1 Power to remedy

- (a) The Lender 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 Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed, shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

7.2 Exercise of rights

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

7.3 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

7.4 Conversion of currency

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- (b) Any such conversion shall be effected at a commercial rate of exchange then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

7.5 New accounts

- (a) If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.5(a), then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt, or deemed receipt, of the relevant notice by the Lender.

7.6 Indulgence

The Lender may, at its 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.

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 and is continuing.

8.2 Discretion

After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks 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) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 8.1.
- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

9.2 Extension of statutory powers

The statutory powers of sale, leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Chattels with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

9.3 Access on enforcement

- (a) At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed or the Facility Agreement, the Chargor will allow the Lender 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 Lender 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 Lender or its Receiver access to any premises for the purpose of clause 9.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

9.4 Redemption of prior Security

- (a) 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 Lender may:
 - (i) redeem any prior Security over any Secured Asset;
 - (ii) procure the transfer of that Security to itself; and
 - (iii) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).
- (b) The Chargor shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

9.5 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate 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 Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied.

9.6 Privileges

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

9.7 Exclusion of liability

Neither the Lender, nor any Receiver or any Delegate shall be liable to the Chargor or any other person:

- (a) (by reason of entering into possession of a Secured Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Secured Assets;
- (b) for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- (c) for any expense, loss or liability:
 - (i) relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this deed;
 - (ii) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or
 - (iii) arising in any other way in connection with this deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

9.8 Conclusive discharge to purchasers

The receipt of the Lender, or any Receiver or Delegate 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 Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that the Lender, Receiver or Delegate 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 Lender 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 Lender 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 it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

10.3 Remuneration

The Lender may fix the remuneration of any Receiver appointed by it 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 Lender 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 Lender 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 Lender 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 Lender.

11. Powers of Receiver

11.1 General

- (a) Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 11.2 to clause 11.18.

- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) 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 itself.

11.2 Repair and improve Secured Assets

A Receiver may undertake or complete any works or repairs, alterations, additions, replacements or other acts for the protection or improvement of the Secured Assets as it thinks fit.

11.3 Grant or surrender leases

A Receiver may grant, or accept surrenders of, any leases, lettings or hire affecting any of the Chattels on any terms and subject to any conditions that it thinks fit.

11.4 Employ personnel and advisers

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 it thinks fit.

11.5 Remuneration

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

11.6 Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it 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.

11.7 Remove Secured Assets

A Receiver may enter any premises where any Secured Assets are located and sever, dismantle and remove any Secured Assets from the premises without the Chargor's consent.

11.8 Manage Secured Assets

A Receiver may do all such things as may be necessary for the ownership, management or operation of the Secured Assets.

11.9 Dispose of Secured Assets

A Receiver may grant options and licences over all or any part of the Chattels, sell, exchange, convert into money, realise, assign, lease and accept surrenders of leases of all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it 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.

11.10 Valid receipts

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

11.11 Make settlements

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

11.12 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 it thinks fit.

11.13 Insurance

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 14, 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.

11.14 Borrow

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender 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 Delegation

A Receiver may delegate its powers in accordance with this deed.

11.17 Absolute beneficial owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights the Receiver 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.

11.18 Incidental powers

A Receiver may do any other acts and things that it:

- (a) may consider desirable or necessary for realising any of the Secured Assets;
- (b) 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) lawfully may or can do as agent for the Chargor.

12. Delegation

12.1 Delegation

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 16.1).

12.2 Terms

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

12.3 Liability

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability of any nature arising from any act, default, omission or misconduct on the part of any Delegate.

13. Application of proceeds

13.1 Order of application of proceeds

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of, the security constituted by this deed (other than sums received pursuant to any Insurance Policy), 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 (but without prejudice to the Lender's rights to recover any shortfall from the Chargor):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, 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 the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

13.2 Appropriation

Neither the Lender, any Receiver nor any Delegate 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.

13.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received pursuant to any Insurance Policy, which are not going to be applied in or towards discharge of the Secured Liabilities):

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and
- (c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

14. Costs and indemnity

14.1 Costs

The Chargor shall, within three Business Days of demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- (a) the negotiation, preparation, execution and delivery of this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed;
- (c) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- (d) any release of any security constituted by this deed; or
- (e) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the rate and in the manner specified in the Facility Agreement.

14.2 Indemnity

The Chargor shall, within three Business Days of demand, indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Chargor in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

15. Further assurance

The Chargor shall promptly, at its own expense, take whatever action the Lender 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 Lender or any Receiver in respect of any Secured Asset,

including, without limitation 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 Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

16. Power of attorney

16.1 Appointment of attorneys

By way of security, the Chargor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this deed; or

- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

16.2 Ratification of acts of attorneys

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

17. Release

Subject to clause 24.3, at the end of the Security Period, the Lender 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.

18. Assignment and transfer

18.1 Assignment by Lender

- (a) At any time, without the consent of the Chargor, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed to the same extent it is permitted assign any of its rights or transfer any of its rights and obligations under the Facility Agreement.
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Lender considers appropriate.

18.2 Lender's right to charge, assign or create security over rights

In addition to the other rights provided to the Lender under this clause 18, the Lender may at any time and without the Chargor's consent, charge, assign or otherwise create Security in or over all or any of its rights under this deed to secure its obligations, except that no such charge, assignment or Security shall:

- (a) release the Lender from any of its obligations under this deed or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of this deed; or
- (b) require any payments to be made by the Chargor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under this deed.

18.3 Assignment by Chargor

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

19. Set-off

19.1 Lender's right of set-off

The Lender may at any time set off any matured liability of the Chargor to the Lender against any matured liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange in its usual course of business for the purpose of set-off. Any exercise by the Lender of its rights under this clause 19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

19.2 No obligation to set off

The Lender is not obliged to exercise its rights under clause 19.1. If it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

19.3 Exclusion of Chargor's right of set-off

All payments made by the Chargor to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

20. Amendments, waivers and consents

20.1 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).

20.2 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 subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure by the Lender to exercise, or delay by it 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 Lender shall be effective unless it is in writing.

20.3 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.

21. Partial invalidity

21.1 Partial invalidity

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

22. Counterparts

22.1 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.

23. Third party rights

23.1 Third party rights

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.
- (b) Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

24. Further provisions

24.1 Independent security

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

24.2 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 Lender discharges this deed in writing.

24.3 Discharge conditional

Any release, discharge or settlement between the Chargor and the Lender shall be conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under to any law relating to insolvency, bankruptcy, winding up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

24.4 Certificates

Any certification or determination by the Lender of any rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

24.5 Consolidation

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

25. Notices

25.1 Delivery

Any notice or other communication 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 or by email; and
- (c) sent to the address or email address identified with its name below or to any other address or email address as is notified in writing by one party to the other from time to time.

25.2 Receipt by Chargor

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

- (a) if delivered by hand, at the time it is left at the relevant address;

- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by email, when received at the relevant email address.

A notice or other communication given as described in clause 25.2(a) or clause 25.2(c) above 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.

25.3 Receipt by Lender

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

25.4 Service of proceedings

This clause 25 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.

25.5 No notice by fax

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

26. Governing law and jurisdiction

26.1 Governing law

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

26.2 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 (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender 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.

26.3 Other service

The Chargor irrevocably consents to any process in any legal action or proceedings under clause 26.2 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.

Schedule 1 Chattels

Units	Asset Category	Asset Number	Asset Description
1	PMPDD	3004	RH75 PRESS P7
1	FFADM	1613	1500WS TABLE
1	PMPDD	1158	250 AIR COMPRESSOR
1	PMPDD	1006	540 GRINDER
1	PMPDD	1007	540 GRINDER
1	PMPDD	1010	540 GRINDER
1	PMPDD	1012	540 GRINDER
1	PMPDD	1014	540 GRINDER
1	PMPDD	1015	540 GRINDER
1	PMPDD	1016	540 GRINDER
1	PMPDD	1019	540 GRINDER
1	PMPDD	1020	540 GRINDER
1	PMPDD	1198	AIR CONDITIONING UNIT
1	PMPDD	2950	AIR SCREW COMPRESSOR
1	PMPDD	1085	BELT GRINDER WET/DRY
1	PMPDD	1100	BIHLER 50 B1
1	PMPDD	1977	BIHLER 50 B2
1	PMPDD	2454	BIHLER 42 B9
1	PMPDD	2046	BIHLER 35 B6
1	PMPDD	2173	BIHLER 35 B5
1	PMPDD	1075	CABINET CUTTER GRINDER
1	CAPTL	1154	CAPITAL TOOLING
1	PMPDD	2793	CNC WIRE EROSION MACHINE
1	PMPDD	2386	PUNCHING & FORMING MACHINE
1	PMPDD	1129	DIGITAL COUNTING SCALE
1	PMPDD	3010	AABACAS GANTRY AND KONE 2T HOIST
1	PMPDD	1046	MOBILE GANTRY 1/2 TON
1	PMPDD	1058	E HEATED SHAKER FURNACE
1	PMPDD	1102	ELECTRONIC FORCE GAUGE
1	PMPDD	1220	EXTRACTION DUCTWORK
1	PMPDD	1039	GH20 PRESS P5
1	PMPDD	1011	GH30 PRESS P6
1	PMPDD	1013	GH30 PRESS P10
1	PMPDD	1022	GH30 PRESS P12
1	PMPDD	1040	GH30 PRESS P11
1	PMPDD	1041	KING RICH KRV 3000 MILLER
1	PMPDD	1116	HARDENING FURNACE
1	PMPDD	2783	HME GH30 GUARD PRESS H1

1	PMPDD	2815	ELLIOT MILLER 313
1	PMPDD	1204	HOT AIR BLOWERS
1	PMPDD	1995	HYDRAULIC PRESS RM40 B8
1	PMPDD	1565	M/M DIGITAL MICROMETER
1	PMPDD	1674	MAT'L TESTING MACHINE
1	PMPDD	1570	MICRO HARDNESS TESTER
1	PMPDD	2913	MICRO HARDNESS TESTER
1	PMPDD	1059	MILING MC DIGITAL READER
1	PMPDD	1146	MODEL 303HD PRESS FEED
1	PMPDD	1215	MODEL 303HD PRESS FEED
1	PMPDD	2326	OPTIDRESS MET EXT V240
1	PMPDD	1049	TAE EVO PAC200 AFTER AIR COOLER
1	PMPDD	1689	PHOSPATE TANK IN ST/ST
1	PMPDD	1054	PNEUMATIC PRESS FEED
1	PMPDD	1055	PNEUMATIC PRESS FEED
1	PMPDD	1056	PNEUMATIC PRESS FEED
1	PMPDD	1057	PNEUMATIC PRESS FEED
1	PMPDD	1086	VERTICAL STOCK REEL
1	PMPDD	1118	PNEUMATIC PRESS FEED
1	PMPDD	1216	PNEUMATIC PRESS FEED
1	PMPDD	1052	POWER HACKSAW MACHINE
1	PMPDD	1944	POWER PRESS BIHLER RM 30 B4
1	PMPDD	2821	HARE 8HP H2
1	PMPDD	2965	POWER PRESS-PRESSIX 160 CNRS (PSM0638)
1	PMPDD	2049	PRESSFEED FOR BIHLER MH1
1	PMPDD	1053	BEKO DRYPOINT DRYER
1	PMPDD	1028	RH25 PRESS P3
1	PMPDD	1023	RH40 PRESS P8
1	FFADM	1557	SAPELE TABLE
1	FFADM	1558	SAPELE TABLE
1	PMPDD	1050	CHESTER PILLAR DRILL
1	PMPDD	1208	SPIN DRYER BASKET
1	PMPDD	1559	STRIP FORMING MACHINE
1	PMPDD	2853	TURRET MILL / LATHE
1	PMPDD	1084	UNIVERSAL BRIDGEPOINT MILLING M/C
1	PMPDD	1071	VERTICAL STOCK REEL CLARKES
1	PMPDD	1083	VERTICAL STOCK REEL
1	PMPDD	1117	VERTICAL STOCK REEL
1	PMPDD	3015	SEYI 250 Tonnes Power Press P4
1	PMPDD	3017	BIHLER 50 B3
1	PMPDD	3019	PSM0771 HIGH SPEED 100T PRESS P2
1	PMPDD	3020	PSM0770 STUD WELDING UNIT

1	PMPDD	3021	PSM0769 RM35 BIHLER B7
1	PMPDD	3022	HARE 8HP H3
1	PMPDD	3023	IDEAL BOILER VAL 420
1	PMPDD	3024	Furnace refurb
1	PMPDD	3025	Factory refurb
1	PMPDD	3026	KARCHER RIDE ON FLOOR CLEANER
1	PMPDD	3028	Rhodes press repair work
1	PMPDD	3029	Sound booth enclosure for RM35
1	PMPDD	3030	Repair of RH100
1	PMPDD	3034	CLARKE PRESS EQUIPMENT DECOILER
1	PMPDD	3035	Press Repair
1	PMPDD	3036	Repair press No 12
1	PMPDD	3037	Refurbish wire room and first aid room
1	FFADM	3039	Factory Office
1	PMPDD	3040	Blues Loop Cycle shell
4	PMPDD	3041	4 x Karcher Floor cleaners
1	PMPDD	3045	BIHLER 50 B10
1	ITSFT	3046	IT migration project
9	PMPDD	3047	9 x tool boxes
1	ITSFT	3048	IT migration project
1	PMPDD	3051	SMED for new Bihler (Dyes)
1	ITSFT	3052	IT migration project
1	PMPDD	3055	Bihler Booth
1	ITSFT	3056	IT migration project
1	PMPDD	3057	Decoiler for Bihler 10
1	CAPTL	3058	Fox Brackett tool refurbishment
1	ITSFT	3059	IT migration project
1	CAPTL	3060	1728 Face plate for forming parts
1	ITSFT	3061	Maintenance system software
1	PMPDD	3062	Metal storage bins
1	PMPDD	3063	Moblie table
1	ITSFT	3064	Tannoy system May
1	PMPDD	3065	Power supplier unit for Bihler 9
1	CAPTL	3066	Capital tool 1620&1728
1	ITSFT	3067	Stock take tablet
1	PMPDD	3068	Aluminium Decoiler
1	FFADM	3069	Office Chair / Board
12	PMPDD	3070	12 C Spanners
1	PMPDD	3071	Scrap Shaker
6	PMPDD	3072	6 off bore & key cast sprockets
1	PMPDD	3073	Feed Case
8	PMPDD	3074	8 Storage bins
1	PMPDD	3075	Press ejection monitoring system

1	PMPDD	3076	General tools
1	PMPDD	3078	Machine parts
1	PMPDD	3079	Storage racking
1	PMPDD	3080	Eye wash station
1	PMPDD	3082	Painting storage bins
1	PMPDD	3083	Electrical supply works
1	PMPDD	3084	Keyence machine
1	PMPDD	3085	Bihler parts
1	PMPDD	3086	US power boards
1	PMPDD	3087	Bihler Formers
1	PMPDD	3089	Kontroltek Bihler software
1	CAPTL	3091	Tool - CB1969
1	CAPTL	3092	Tool - CB1971
1	CAPTL	3093	Tool - CB1984
1	CAPTL	3094	Tool - CB1985
1	CAPTL	3095	Tool - CB1986
1	CAPTL	3096	Tool - CB1557
1	CAPTL	3097	Tool - CB1864
1	CAPTL	3098	Tool - CB1196
1	PMPDD	3099	Bagging machine
1	PMPDD	3100	New heating system - Warehouse
1	CAPTL	3101	Tool - CB1970
1	CAPTL	3102	Tool - CB1972/73
1	CAPTL	3103	Tool - CB1974/75
1	CAPTL	3104	Tool - CB1825/1888/1925
1	CAPTL	3105	Tool - CB1948
	PMPDD	3106	Fire Alarm System
1	PMPDD	3107	2nd Operation insertion tool (1990+1992)
1	CAPTL	3108	Jig for Shims
1	PMPDD	3111	Bruderer Press P3
1	PMPDD	3112	Slides for GRM50
1	PMPDD	3114	Oil tanks and Bunds
1	CAPTL	3113	Tool - 1988
1	PMPDD	3115	Monitoring system Bruderer Press
1	PMPDD	3116	S/w & training for wire erosion m/c
1	CAPTL	3118	Tool - 2141
1	PMPDD	3119	CNC Milling Machine Bridgeport

Schedule 2 Relevant Agreements

[Intentionally left blank]

Signatures

Chargor

**EXECUTED and DELIVERED as a DEED by
XANDOR AUTOMOTIVE CANNING BRETT
LTD acting by a director:**

[Redacted Signature]

In the presence of:

Director

DocuSigned by:

Witness' Signature:

[Redacted Signature]

Witness' Name: Nicola Nicholson

Witness Address:

[Redacted Address]

Details for notices

Address: Pontardawe Industrial Estate, Pontardawe, Swansea, Wales, SA8 4EP

Email:

[Redacted Email]

Attention: Paul Nicholson

Lender

**EXECUTED and DELIVERED as a DEED by
W.H. SMITH & SONS HOLDINGS LIMITED
acting by a director:**

DocuSigned by:

[Redacted Signature]

In the presence of:

Director

DocuSigned by:

Witness' Signature:

[Redacted Signature]

Witness' Name: Nicola Nicholson

Witness Address:

[Redacted Address]

Details for notices

Address: Water Orton Lane Minworth, Sutton Coldfield, West Midlands, B76 9BG

Email:

[Redacted Email]

Attention: Paul Nicholson