

MR01

Particulars of a charge

838248/23.

Oyez



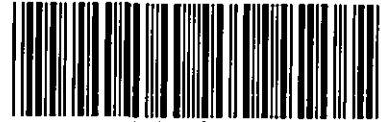
Go online to file this information
www.gov.uk/companieshouse

A fee is payable with this form
Please see 'How to pay'

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument.

☒ **What this form is NOT for**
You may not use this form to
register a charge where the
instrument. Use form MR01

SATURDAY



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08/04/2017

#280

COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

You must enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

1 Company details

Company number

Company name in full

For official use

Filling in this form

Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by *

2 Charge creation date

Charge creation date

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below.

☐ I confirm that there are more than four persons, security agents or trustees entitled to the charge.

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4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

Brief description

The freehold land shown edged red on the plan of Title Number NN220803 filed at the Registry and being Misco UK Limited, Darby Close, Park Farm Industrial Estate, Wellingborough NN8 6XH

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☒ Yes

☐ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☐ Yes Continue

☒ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ Yes

☐ No

8

Trustee statement ^①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

^① This statement may be filed after the registration of the charge (use form MR06).

9

Signature

Please sign the form here.

Signature

Signature

×

BP Collins LLP

×

This form must be signed by a person with an interest in the charge.

MR01

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Company name

B P Collins LLP

Address

Collins House

32-38 Station Road

Gerrards Cross

Buckinghamshire

County/Region

Postcode

S L 9 8 E L

Country

DX

DX 40256 Gerrards Cross

Telephone



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For companies registered in Scotland:

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 114143

Charge code: SC11 4143 0026

The Registrar of Companies for Scotland hereby certifies that a charge dated 24th March 2017 and created by MISCO UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th April 2017.

Given at Companies House, Edinburgh on 20th April 2017



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

Dated March 24 2017

MISCO UK LIMITED
and
SYSTEMAX NETHERLANDS B.V.

THIRD-PARTY LEGAL MORTGAGE OVER PROPERTY
FROM A COMPANY SECURING SPECIFIC LIABILITIES

I certify this is a true and complete copy of the original document

Signed *Lucy Newman*
Name LUCY NEWMAN
Position SOLICITOR
Date 7.4.2017

BP Collins LLP
32-38 Station Road
Gerrards Cross
SL9 8EL

bpcollins |
SOLICITORS

THIS DEED is made this 24 day of March 2017

BETWEEN

- 1 MISCO UK LIMITED, incorporated and registered in Scotland with company number SC114143 whose registered office is at Caledonian Exchange, 19a Canning Street, Edinburgh, Scotland, EH3 8HE as guarantor and indemnifier (the "Guarantor")
- 2 SYSTEMAX NETHERLANDS B.V., a private limited liability corporation organised and existing under the laws of The Netherlands having its corporate seat at Amsterdam, The Netherlands, having its registered address at Herengracht 500, 1017CB Amsterdam, The Netherlands, registered with the Dutch trade register of the Chamber of Commerce under 67872158 (the "Seller").

RECITALS

- (A) The Purchaser has certain present and future liabilities to the Seller (and its Affiliates and Representatives) under the SPA.
- (B) The Guarantor owns the Property.
- (C) Under the terms of the Guarantee and Indemnity Agreement the Purchaser has agreed to procure that the Guarantor will provide security in relation to the Guaranteed Obligations.
- (D) This deed provides security which the Purchaser has agreed to ensure is provided to the Seller for the liabilities of the Purchaser and also of the Guarantor under the SPA and the Guarantee and Indemnity Agreement.
- (E) This deed shall be read in conjunction with and shall be subject to the terms of the Intercreditor Agreement (as defined below). In the event of any conflict between the terms of this agreement and the terms of the Intercreditor Agreement then the terms of the Intercreditor Agreement shall prevail.

OPERATIVE PROVISIONS:

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply in this deed:

"Affiliate" means, with respect to any individual or Entity, any other individual or Entity that directly or indirectly controls, is controlled by, or is under common control with that other individual or Entity. For purposes of this definition, an individual or Entity "controls" another individual or Entity if that individual or Entity possesses, directly or indirectly, the power to direct the management and policies of that other individual or Entity, whether through ownership of voting securities, by Contract or otherwise and "controlled by" and "under common control with" have similar meanings.

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

"Charged Property" all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property

	shall include references to any part of it).
"Debtco Security"	the second ranking legal mortgage over the Property granted by the Guarantor to HUK 76 Limited;
"Delegate"	any person appointed by the Seller or any Receiver under clause 14 and any person appointed as attorney of the Seller, Receiver or Delegate.
"Entity"	means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company, unlimited liability company or joint stock company) or unincorporated organisation, works council, labour union or other entity.
"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 in so far as they relate to or apply to the Environment.
"Event of Default"	means any failure on the part of the Purchaser to make payment in respect of the Guaranteed Obligations in accordance with the terms of the SPA or any failure by the Guarantor to make payment of any monies due under the Guarantee and Indemnity Agreement immediately when demanded by the Seller.
"Guarantee and Indemnity Agreement"	the agreement between the Purchaser, the Seller, the Guarantor and Systemax Inc entered into on or about the date of this deed under which the Guarantor has agreed to guarantee the obligations of the Purchaser arising under the SPA and agrees to give security.
"Guaranteed Obligations"	all present and future obligations and liabilities of the Purchaser under the SPA (including but not limited to the obligations under section 7.3) and all agreements and obligations entered into pursuant to or in connection with the SPA including all money and liabilities of any nature from time to time due, owing or incurred by the Purchaser and any and all other obligations of the Purchaser under those agreements subject always to the limitations of section 7.4 of the SPA
"Insurance Policy"	each contract or policy of insurance effected or

	maintained by the Guarantor from time to time in respect of the Property.
"Intercreditor Agreement"	the intercreditor agreement dated on or around the date of this deed and made between HUK 76 Limited, Systemax Inc., Systemax Netherlands B.V., HUK 77 Limited (as the Company) and HUK 77 Limited, Misco UK Limited and Misco Solutions B.V. (as the Obligors).
"LPA 1925"	the Law of Property Act 1925.
"Property"	the freehold property owned by the Guarantor known as the freehold land shown edged with red on the plan of Title Number NN220803 filed at the Registry and being Misco UK Limited, Darby Close, Park Farm Industrial Estate, Wellingborough NN8 6XH.
"Purchaser"	HUK 77 Limited Incorporated and registered in England with company number 10638880 whose registered office is at Olympus House, Olympus Avenue, Leamington Spa, Warwickshire, United Kingdom, CV34 6BF.
"Receiver"	a receiver or a receiver and manager of any or all of the Charged Property.
"Representative"	of any party means any officer, director, employee, attorney, accountant, advisor, agent, equity holder or lender of or to such party.
"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 Liabilities"	all present and future monies, obligations and liabilities of either the Purchaser in respect of the Guaranteed Obligations or the Guarantor under the Guarantee and Indemnity Agreement in each case to the Seller or any Representative or Affiliate of the Seller, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Guarantee and Indemnity Agreement (including, without limitation, those arising under clause 25.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.
"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 after the expiration of the first anniversary of the date of this Deed or if at such date the Seller has made a claim or demand for

the payment of the Guaranteed Obligations then the date that is 15 days after the first anniversary or if proceedings have been commenced by the Seller on conclusion of such proceedings.

"SPA"

the securities purchase agreement made between the Purchaser and the Seller and dated the same date as this deed.

"VAT"

value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Interpretation

In this deed:

- 1.2.1 clause headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party and the **Purchaser** shall include that party's or the Purchaser'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;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax and email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause is to a clause of this deed;
- 1.2.12 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;

- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and

1.3 Clawback

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

1.4 Nature of security over real property

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Guarantor in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

1.5 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Guarantee and Indemnity Agreement and of any side letters between any parties in relation to the Guarantee and Indemnity Agreement are incorporated into this deed.

1.6 Perpetuity period

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

2 Covenant to pay

2.1 Covenant to pay

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

2.2 Limited recourse

Notwithstanding any other provision of the Guarantee and Indemnity Agreement, it is expressly agreed that:

- 2.2.1 the sole recourse of the Seller to the Guarantor under this deed is to the Guarantor's Interest in the Charged Property; and
- 2.2.2 the liability of the Guarantor to the Seller pursuant to or otherwise in connection with the Guarantee and Indemnity Agreement shall be:
 - 2.2.2.1 limited in aggregate to an amount equal to that recovered as a result of enforcement of this deed with respect to the Charged Property; and
 - 2.2.2.2 satisfied only from the proceeds of sale or other disposal or realisation of the Charged Property pursuant to this deed.

3 Grant of security

3.1 Legal mortgage and fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee charges to the Seller:

- 3.1.1 by way of first legal mortgage, the Property; and
- 3.1.2 by way of first fixed charge:
 - 3.1.2.1 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 to the extent not effectively assigned under clause 3.2;
 - 3.1.2.2 the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Guarantor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
 - 3.1.2.3 all authorisations (statutory or otherwise) held or required in connection with the Guarantor's business carried on at the Property or the use of any Charged Property, and all rights in connection with them.

3.2 Assignment

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee assigns to the Seller absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy provided that nothing in this clause 3.2 shall constitute the Seller as mortgagee in possession.

4 Perfection of security

4.1 Registration of legal mortgage at the Land Registry

The Guarantor consents to an application being made by the Seller to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated 24 March 2017 in favour of SYSTEMAX NETHERLANDS BV referred to in the charges register or their conveyancer."

5 Liability of the Guarantor and Seller's protections

5.1 Liability not discharged

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

- 5.1.1 any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- 5.1.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy that the Seller may now or after the date of this deed have from or against the Purchaser, the Guarantor or any other person in connection with the Secured Liabilities;
- 5.1.3 any act or omission by the Seller or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Purchaser, the Guarantor or any other person;
- 5.1.4 any grant of time, indulgence, waiver or concession to the Purchaser, the Guarantor or any other person;
- 5.1.5 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 Purchaser, the Guarantor or any other person;
- 5.1.6 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Purchaser, the Guarantor or any other person in connection with the Secured Liabilities;
- 5.1.7 any claim or enforcement of payment from the Purchaser, the Guarantor or any other person; or
- 5.1.8 any other act or omission that would not have discharged or affected the liability of the Guarantor 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 Guarantor or otherwise reduce or extinguish its liability under this deed.

5.2 Immediate recourse

The Guarantor waives any right it may have to require the Seller:

- 5.2.1 to take any action or obtain judgment in any court against the Purchaser or any other person;

5.2.2 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Purchaser or any other person; or

5.2.3 to make demand, enforce or seek to enforce any claim, right or remedy against the Purchaser or any other person,

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

5.3 Non-competition

Except as set out in and contemplated by the Intercreditor Agreement, the Guarantor warrants to the Seller that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Purchaser, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Guarantor under this deed but:

5.3.1 if any of the Rights is taken, exercised or received by the Guarantor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for the Seller for application in or towards the discharge of the Secured Liabilities under this deed in accordance with the terms of the Intercreditor Agreement; and

5.3.2 on demand by the Seller, the Guarantor shall promptly transfer, assign or pay to the Seller all Rights and all monies from time to time held on trust by the Guarantor under this clause 5.3 in accordance with the terms of the Intercreditor Agreement.

6 Representations and warranties

6.1 Times for making representations and warranties

The Guarantor makes the representations and warranties set out in this clause 6 to the Seller on the date of this deed and the representations and warranties contained in clause 6 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.

6.2 Due incorporation

The Guarantor:

6.2.1 is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and

6.2.2 has the power to own its assets and carry on its business as it is being conducted.

6.3 Powers

6.3.1 The Guarantor has the power to enter into, deliver and perform and has taken all necessary action to authorise its entry into, delivery and performance of this deed and the transactions contemplated by it.

6.3.2 No limit on its powers will be exceeded as a result of the entry into of this deed.

6.4 Non-contravention

The entry into and performance by the Guarantor of, and the transactions contemplated by, this deed do not and will not contravene or conflict with:

6.4.1 its constitutional documents;

6.4.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or

6.4.3 any law or regulation or judicial or official order applicable to it.

6.5 Binding obligations

6.5.1 the Guarantor's obligations under this deed are legal, valid, binding and enforceable; and

6.5.2 this deed creates:

6.5.2.1 valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and

6.5.2.2 subject to registration in accordance with the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to Security in it,

in favour of the Seller, having the priority and ranking expressed to be created by this deed and ranking ahead of all (if any) Security and rights of third parties, except those preferred by law.

6.6 No litigation

No litigation, arbitration, administrative proceedings or investigations are taking place, pending or, to the Guarantor's knowledge, threatened against it, any of its directors or the Charged Property.

6.7 Ownership of Charged Property

The Guarantor is the sole legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

6.8 No Security

The Charged Property is free from any Security other than the Security created by this deed and the Debtco Security.

6.9 No adverse claims

The Guarantor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

6.10 No adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Property.

6.11 No breach of laws

There is no breach of any law or regulation, that materially and adversely affects the Charged Property.

6.12 No interference in enjoyment

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

6.13 No overriding interests

Nothing has arisen, has been created or is subsisting that would be an overriding interest in the Property.

6.14 No prohibitions or breaches

There is no prohibition on the Guarantor assigning its rights in any of the Charged Property referred to in clause 3.2 and the entry into of this deed by the Guarantor does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Guarantor or its assets.

6.15 Environmental compliance

The Guarantor has, at all times, complied in all material respects with all applicable Environmental Law.

6.16 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 Guarantor or otherwise.

7 General covenants

7.1 Negative pledge and disposal restrictions

The Guarantor shall not at any time, except with the prior written consent of the Seller:

7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed and the Debtco Security;

7.1.2 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 Charged Property; or

7.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

7.2 Preservation of Charged Property

The Guarantor 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 Seller or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

7.3 Compliance with laws and regulations

7.3.1 The Guarantor shall not, without the Seller's prior written consent, use or permit the Charged Property to be used in any way contrary to law.

7.3.2 The Guarantor shall:

7.3.2.1 comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;

7.3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and

- 7.3.2.3 promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

7.4 Enforcement of rights

The Guarantor shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Guarantor and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Seller may require from time to time.

7.5 Notice of misrepresentations and breaches

The Guarantor shall, promptly on becoming aware of any of the same, give the Seller notice in writing of:

- 7.5.1 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
- 7.5.2 any breach of any covenant set out in this deed.

7.6 Ranking of obligations

Subject to the terms of the Intercreditor Agreement, the Guarantor's payment obligations under this deed will, at all times, rank in all respects in priority to all its other indebtedness, other than indebtedness preferred by operation of law in the event of its winding-up.

7.7 Authorisations

The Guarantor shall obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this deed and to ensure the legality, validity, enforceability and admissibility in evidence of this deed in its jurisdiction of incorporation.

8 Property covenants

8.1 Repair and maintenance

The Guarantor shall keep all premises, and fixtures and fittings on the Property, in good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value

8.2 No alterations

- 8.2.1 The Guarantor shall not, without the prior written consent of the Seller:
- 8.2.1.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
- 8.2.1.2 make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or

removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

- 8.2.2 The Guarantor shall promptly give notice to the Seller if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

8.3 Development restrictions

The Guarantor shall not, without the prior written consent of the Seller:

- 8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- 8.3.2 carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

8.4 Insurance

- 8.4.1 The Guarantor shall insure and keep the Charged Property against:

- 8.4.1.1 loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
- 8.4.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Guarantor; and
- 8.4.1.3 any other risk, perils and contingencies as the Seller may reasonably require.

- 8.4.2 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Seller and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.

- 8.4.3 The Guarantor shall, if requested by the Seller, produce to the Seller each policy, certificate or cover note relating to any insurance required by clause 8.4.1.

- 8.4.4 The Guarantor shall, if requested by the Seller, procure that a note of the Seller's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with clause 8.4.1 but without the Seller having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.

8.5 Insurance premiums

The Guarantor shall:

- 8.5.1 promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- 8.5.2 (if the Seller so requires) give to the Seller copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

8.6 No invalidation of Insurance

The Guarantor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

8.7 Proceeds from Insurance Policies

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

- 8.7.1 be paid immediately to the Seller;
- 8.7.2 if they are not paid directly to the Seller by the insurers, be held, pending such payment, by the Guarantor as trustee of the same for the benefit of the Seller; and
- 8.7.3 at the option of the Seller, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

8.8 Leases and licences affecting the Property

The Guarantor shall not, without the prior written consent of the Seller (which consent, in the case of clause 8.8.4, is not to be unreasonably withheld or delayed in circumstances in which the Guarantor may not unreasonably withhold or delay its consent):

- 8.8.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 8.8.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- 8.8.3 let any person into occupation of or share occupation of the whole or any part of the Property; or
- 8.8.4 grant any consent or licence under any lease or licence affecting the Property.

8.9 No restrictive obligations

The Guarantor shall not, without the prior written consent of the Seller, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or

create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

8.10 Proprietary rights

The Guarantor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Seller.

8.11 Compliance with and enforcement of covenants

The Guarantor shall:

- 8.11.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Seller so requires) produce to the Seller evidence sufficient to satisfy the Seller that those covenants, stipulations and conditions have been observed and performed; and
- 8.11.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

8.12 Notices or claims relating to the Property

8.12.1 The Guarantor shall:

- 8.12.1.1 give full particulars to the Seller of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a Notice) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- 8.12.1.2 (if the Seller so requires) immediately, and at the cost of the Guarantor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Seller in making, any objections or representations in respect of that Notice that the Seller thinks fit.

8.12.2 The Guarantor shall give full particulars to the Seller of any claim, notice or other communication served on it in respect of any alleged breach of any Environmental Law relating to the Property.

8.13 Payment of outgoings

The Guarantor shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

8.14 Environment

The Guarantor shall in respect of the Property comply in all material respects with all the requirements of Environmental Law.

8.15 Conduct of business on Property

The Guarantor shall carry on its trade and business on those parts (if any) of the Property as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business.

8.16 Inspection

The Guarantor shall permit the Seller, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

8.17 VAT option to tax

The Guarantor shall not, without the prior written consent of the Seller:

8.17.1 exercise any VAT option to tax in relation to the Property; or

8.17.2 revoke any VAT option to tax exercised, and disclosed to the Seller in writing, before the date of this deed.

9 Powers of the Seller

9.1 Power to remedy

9.1.1 The Seller shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Guarantor of any of its obligations contained in this deed.

9.1.2 The Guarantor irrevocably authorises the Seller and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 Any monies expended by the Seller in remedying a breach by the Guarantor of its obligations contained in this deed shall be reimbursed by the Guarantor to the Seller on a full indemnity basis and shall carry interest in accordance with clause 16.1.

9.1.4 In remedying any breach in accordance with this clause 9.1, the Seller, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Seller may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

9.2 Exercise of rights

The rights of the Seller under clause 9.1 are without prejudice to any other rights of the Seller under this deed. The exercise of any rights of the Seller under this deed shall not make the Seller liable to account as a mortgagee in possession.

9.3 Seller has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Seller in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

9.4 Conversion of currency

9.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Seller may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 9.4) from their existing currencies of denomination into any other currencies of denomination that the Seller may think fit.

9.4.2 Any such conversion shall be effected at the then prevailing spot selling rate of exchange for such other currency against the existing currency.

- 9.4.3 Each reference in this clause 9.4 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.

9.5 New accounts

- 9.5.1 If the Seller receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Property, the Seller may open a new account for the Guarantor in the Seller's books. Without prejudice to the Seller's right to combine accounts, no money paid to the credit of the Guarantor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- 9.5.2 If the Seller does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 9.5.1, then, unless the Seller gives express written notice to the contrary to the Guarantor, all payments made by the Guarantor to the Seller shall be treated as having been credited to a new account of the Guarantor 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 Seller.

9.6 Indulgence

The Seller 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 person is jointly liable with the Guarantor) 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 Guarantor for the Secured Liabilities.

10 When security becomes enforceable

10.1 Security becomes enforceable on Event of Default

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

10.2 Discretion

After the security constituted by this deed has become enforceable, the Seller may, in its absolute discretion but subject always to the terms of the Intercreditor Agreement, 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 Charged Property.

11 Enforcement of security

11.1 Enforcement powers

- 11.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Seller and a purchaser from the Seller, arise on and be exercisable at any time after the execution of this deed, but the Seller shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1.

- 11.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

11.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Seller 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 Guarantor, to:

- 11.2.1 grant a lease or agreement for lease;
- 11.2.2 accept surrenders of leases; or
- 11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

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

11.3 Prior Security

11.3.1 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 Seller may:

- 11.3.1.1 redeem that or any other prior Security;
- 11.3.1.2 procure the transfer of that Security to itself; and
- 11.3.1.3 settle and pass any account of the holder of any prior Security.

11.3.2 The settlement and passing of any such account shall be, in the absence of any manifest error, conclusive and binding on the Guarantor. All monies paid by the Seller to an encumbrancer in settlement of any of those accounts shall be, as from its payment by the Seller, due from the Guarantor to the Seller on current account and be secured as part of the Secured Liabilities.

11.4 Protection of third parties

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

- 11.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 11.4.2 whether any power the Seller, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 11.4.3 how any money paid to the Seller, any Receiver or any Delegate is to be applied.

11.5 Privileges

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

11.6 No liability as mortgagee in possession

Neither the Seller, any Receiver nor any Delegate shall be liable, by reason of entering into possession of the Charged Property or for any other reason, to account

as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

11.7 Relinquishing possession

If the Seller, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

11.8 Conclusive discharge to purchasers

The receipt of the Seller 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 Charged Property or in making any acquisition in the exercise of their respective powers, the Seller, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

12 Receivers

12.1 Appointment

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

12.2 Removal

The Seller may, without further notice (subject to section 45 of the Insolvency Act 1986), 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.

12.3 Remuneration

The Seller 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.

12.4 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 Seller 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.

12.5 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 Seller despite any prior appointment in respect of all or any part of the Charged Property.

12.6 Agent of the Guarantor

Any Receiver appointed by the Seller under this deed shall be the agent of the Guarantor and the Guarantor 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 Guarantor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Seller.

13 Powers of receiver

13.1 Powers additional to statutory powers

- 13.1.1** Any Receiver appointed by the Seller under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 13.2 to clause 13.20.
- 13.1.2** If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- 13.1.3** Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Guarantor, the directors of the Guarantor or himself.

13.2 Repair and develop the Property

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

13.3 Grant or accept surrenders of leases

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he thinks fit.

13.4 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 he thinks fit. A Receiver may discharge any such person or any such person appointed by the Guarantor.

13.5 Make and revoke VAT options to tax

A Receiver may make, exercise or revoke any VAT option to tax that he thinks fit.

13.6 Charge for remuneration

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

13.7 Realise Charged Property

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

13.8 Manage or reconstruct the Guarantor's business

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

13.9 Dispose of Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting

any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

13.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Guarantor.

13.11 Give valid receipts

A Receiver may give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

13.12 Make settlements

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

13.13 Bring proceedings

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

13.14 Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 16.2, 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 Guarantor under this deed.

13.15 Powers under LPA 1925

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

13.16 Borrow

A Receiver may, for any of the purposes authorised by this clause 13, raise money by borrowing from the Seller (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Seller consents, terms under which that Security ranks in priority to this deed).

13.17 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 Guarantor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

13.18 Delegation

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

13.19 Absolute beneficial owner

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and

things, as an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Property.

13.20 Incidental powers

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

13.20.1 may consider desirable or necessary for realising any of the Charged Property;

13.20.2 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

13.20.3 lawfully may or can do as agent for the Guarantor.

14 Delegation

14.1 Delegation

The Seller 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 18.1).

14.2 Terms

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

14.3 Liability

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

15 Application of proceeds

15.1 Order of application of proceeds

All monies received by the Seller, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than sums received under 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:

15.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Seller (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;

15.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Seller determines; and

15.1.3 in payment of the surplus (if any) to the Guarantor or other person entitled to it.

15.2 Appropriation

Neither the Seller, 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.

15.3 Suspense account

After the Charge becomes enforceable all monies received by the Seller, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities), in accordance with the terms of the Intercreditor Agreement:

- 15.3.1 may, at the discretion of the Seller, Receiver or Delegate, be credited to any suspense or securities realised account;
- 15.3.2 shall bear interest, if any, at the rate agreed in writing between the Seller and the Guarantor; and
- 15.3.3 may be held in that account for so long as the Seller, Receiver or Delegate thinks fit.

16 Costs and indemnity

16.1 Costs

The Guarantor shall, within five Business Days of demand, pay to, or reimburse, the Seller 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 Seller, any Receiver or any Delegate in connection with:

- 16.1.1 this deed or the Charged Property;
- 16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Seller's, a Receiver's or a Delegate's rights under this deed; or
- 16.1.3 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, liquidation, winding-up or administration of the Guarantor).

16.2 Indemnity

16.2.1 The Guarantor shall indemnify the Seller, 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:

- 16.2.1.1 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 Charged Property;
- 16.2.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- 16.2.1.3 any default or delay by the Guarantor in performing any of its obligations under this deed.

- 16.2.2 Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

17 Further assurance

17.1 Further assurance

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

- 17.1.1 creating, perfecting or protecting the security intended to be created by this deed;
- 17.1.2 facilitating the realisation of any of the Charged Property; or
- 17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Seller or any Receiver in respect of any of the Charged Property,

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

18 Power of attorney

18.1 Appointment of attorneys

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

- 18.1.1 the Guarantor is required to execute and do under this deed; or
- 18.1.2 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 Seller, any Receiver or any Delegate.

18.2 Ratification of acts of attorneys

The Guarantor 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 18.1.

19 Release

19.1 Release

Subject to clause 25.3, on the expiry of the Security Period (but not otherwise), the Seller shall, at the request and cost of the Guarantor, take whatever action is necessary to:

- 19.1.1 release the Charged Property from the security constituted by this deed; and
- 19.1.2 reassign the Charged Property to the Guarantor.

20 Assignment and transfer

20.1 Assignment by Seller

20.1.1 At any time, without the consent of the Guarantor, the Seller may assign or transfer any or all of its rights and obligations under this deed provided that any such person to whom the rights or obligations are assigned or transferred shall also agree in writing to comply with the terms of the Intercreditor Agreement.

20.1.2 The Seller may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Guarantor, the Charged Property and this deed that the Seller considers appropriate.

20.2 Assignment by Guarantor

The Guarantor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

21 Amendments, waivers and consents

21.1 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).

21.2 Waivers and consents

21.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

21.2.2 A failure or delay by a party to exercise 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 Seller shall be effective unless it is in writing.

21.3 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.

22 Severance

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

23 Counterparts

23.1 Counterparts

- 23.1.1 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.
- 23.1.2 Transmission of an executed counterpart of this deed (but for the avoidance of doubt not just a signature page) by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 23.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

24 Third party rights

24.1 Third party rights

- 24.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 24.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

25 Further provisions

25.1 Independent security

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

25.2 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 Seller discharges this deed in writing.

25.3 Discharge conditional

Any release, discharge or settlement between the Guarantor and the Seller shall be deemed conditional on no payment or security received by the Seller in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- 25.3.1 the Seller 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 Charged Property, for any period that the Seller deems necessary to provide the Seller with security against any such avoidance, reduction or order for refund; and

25.3.2 the Seller may recover the value or amount of such security or payment from the Guarantor subsequently as if the release, discharge or settlement had not occurred.

25.4 Certificates

A certificate or determination by the Seller as to any amount for the time being due to it from the Guarantor under this deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

25.5 Consolidation

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

26 Notices

26.1 Delivery

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

26.1.1 in writing;

26.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email or fax; and

26.1.3 sent to:

26.1.3.1 the Guarantor at:

HUK 77

80 New Bond Street

London

W1S 1SB Fax: 020 7317 2051

Attention: Inca Ross

26.1.3.2 the Seller at:

11 Harbor Park Drive

Port Washington,

NY 11050

Fax: (516) 608-7761

Attention: E Lerner and T Clark

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

26.2 Receipt by Guarantor

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

26.2.1 if delivered by hand, at the time it is left at the relevant address;

- 26.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting;
- 26.2.3 if sent by email one Business Day after being sent, (a copy must also be sent by registered mail or delivered personally) and
- 26.2.4 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 26.2.1 to 26.2.4 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.

26.3 Receipt by Seller

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

26.4 Service of proceedings

This clause 26 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.

27 Governing law and jurisdiction

27.1 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.

27.2 Jurisdiction

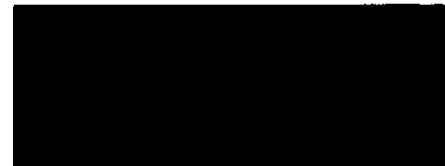
Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Seller to take proceedings against the Guarantor 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.

27.3 Other service

The Guarantor irrevocably consents to any process in any legal action or proceedings under clause 27.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

Executed as a deed by)
MISCO UK LIMITED)
on being signed by:)
Alan Cartwell)
a director, in the presence of:)



Director

Signature of witness:



Name:

Sophie Sullivan
CMS Cameron McKenna LLP

Address:

78 Cannon Street
London
EC4N 6AF

Occupation:

Solicitor

Executed as a deed on behalf of)
SYSTEMAX NETHERLANDS B.V. a)
company incorporated under the laws of)
the Netherlands by)
Thomas William Axmacher, a Managing)
Director A and)

.....:
a Managing B Director

.....

Director

Signature of witness:

.....

Name:

.....

Address:

.....

.....

Occupation:

.....

27.3 Other service

The Guarantor irrevocably consents to any process in any legal action or proceedings under clause 27.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

Executed as a deed by

MISCO UK LIMITED

on being signed by:

a director, in the presence of:

)
)
)
)
)

.....
Director

Signature of witness:

Name:

Address:

Occupation:

Executed as a deed on behalf of

SYSTEMAX NETHERLANDS B.V. a

company incorporated under the laws of
the Netherlands by

Thomas William Axmacher, a Managing
Director A and

R. v. Roel
.....
a Managing B Director

)
)
)
)
)

Signature of witness:

Name:

Address:

Occupation:

April Cruder
18 Wooleys Lane
Great Wier NY 11023
attorney