

MR01

Particulars of a charge

39/118226
IRIS Laserform

A fee is payable with this form.
Please see 'How to pay' on the
last page.


You can use the WebFiling service to file this form online.
Please go to www.companieshouse.gov.uk

✓ **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 there is no
instrument. Use form

For further information, please
refer to our guidance at:
www.companieshouse.gov.uk

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

 You **must** enclose a certified copy of the instrument with this form
scanned and placed on the public record.



SCT 21/05/2013 #774
COMPANIES HOUSE

1 Company details

Company number S C 1 2 1 8 4 7
Company name in full KOBUSCH UK LIMITED (THE "CHARGOR")

For official use
8
→ **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 d1 d5 m0 m5 y2 y0 y1 y3

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 COMMERZBANK AKTIENGESELLSCHAFT, FILIALE
LUXEMBURG

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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Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security.

Continuation page

Please use a continuation page if you need to enter more details.

Description

ALL AND WHOLE THE CHARGOR'S INTEREST IN THE LEASEHOLD SUBJECTS AT 3 YOUNG SQUARE, BRUCEFIELD INDUSTRIAL PARK, LIVINGSTON, BEING THE SUBJECTS REGISTERED IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER MID137815.

5

Fixed charge or fixed security

Does the instrument include a fixed 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 chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☐ Yes

☒ No

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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

X

Mark Paul

For and on behalf of
Burness Paul & Williamsons LLP X

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

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Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name EILIDH CAMPBELL

Company name BURNES PAULL & WILLIAMSONS
LLP

Address 50 LOTHIAN ROAD

FESTIVAL SQUARE

Post town EDINBURGH

County/Region

Postcode E H 3 9 W J

Country

DX ED73 EDINBURGH

Telephone 0131 473 6194



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 £13 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.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

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



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 121847

Charge code: SC12 1847 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 15th May 2013 and created by KOBUSCH UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st May 2013.

Given at Companies House, Edinburgh on 23rd May 2013



Certified a true copy

Edinburgh 13.5.13

Lynne Reekie

for and on behalf of Burness Paull & Williamson LLP

**Burness Paull
& Williamson**

KOBUSCH UK LIMITED

as the Chargor

and

COMMERZBANK AKTIENGESELLSCHAFT, FILIALE LUXEMBURG

as Security Agent for the Secured Parties

STANDARD SECURITY

in respect of the leasehold subjects at 3 Young Square, Brucefield Industrial Park,
Livingston, registered in the Land Register of Scotland under Title Number
MID137815

This Standard Security is subject to an Intercreditor Agreement
(as defined herein)

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INSTRUMENT

by

- (1) **KOBUSCH UK LIMITED**, a company incorporated under the Companies Acts with registered number SC121847 and having its registered office at Young Square, Brucefield Industrial Park, Livingston, West Lothian, EH54 9BX ("**the Chargor**");

in favour of

- (2) **COMMERZBANK AKTIENGESELLSCHAFT, FILIALE LUXEMBURG**, the Luxembourg Branch of Commerzbank AG, a stock corporation organised under the laws of the Federal Republic of Germany registered in Frankfurt am Main, Germany, having its registered office at 25, Rue Edward Steichen, L-2540 Luxembourg, Grand-Duchy of Luxembourg and registered with the Luxembourg Register of Commerce and Companies under registration number B 119317, except as expressly provided herein acting in its capacity of Security Agent for the Secured Parties on the terms and conditions set out in the Intercreditor Agreement ("**the Security Agent**" which expression shall include any person for the time being appointed as security agent or as an additional security agent for the purposes of, and in accordance with, the Intercreditor Agreement) (all as defined below).

CONSIDERING THAT:-

- (i) further to a Senior Facilities Agreement and a Mezzanine Facility Agreement (as defined below) the Senior Lenders and the Mezzanine Lenders, respectively have agreed to make available to the Borrowers, under and as defined in the Facilities Agreements (as defined below), certain facilities ("**the Facilities**") in a maximum aggregate amount of EUR 131,550,000.
- (ii) one of the conditions precedent to the availability of the Facilities referred to in paragraph (i) above is that the Chargor grants to the Security Agent this Standard Security.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

1 DEFINITIONS AND INTERPRETATION

1.1 In this Instrument:-

"**Acceleration Event**" has the meaning given to it in the Intercreditor Agreement;

"**Debt Document**" has the meaning given to it in the Intercreditor Agreements;

"**Facility Agreements**" means the Senior Facilities Agreement and the Mezzanine Facility Agreement;

"Intercreditor Agreement" means the intercreditor agreement dated on or about the date of this Instrument and made between, among others, Kobusch Germany Holding GmbH as Parent, Kobusch Germany 1 GmbH as the Company, the Debtors, Commerzbank Aktiengesellschaft, Filiale Luxemburg as Security Agent, Commerzbank Aktiengesellschaft, Filiale Luxemburg as Senior Agent, Citibank International plc as Mezzanine Agent, the Senior Lenders, Landesbank Baden-Württemberg, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., Zweigniederlassung Frankfurt am Main, Frankfurt branch, Deutsche Bank Luxembourg SA, Commerzbank Aktiengesellschaft, and DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main as Senior Arrangers, the Mezzanine Lenders, Citigroup Global Markets Limited as Mezzanine Arranger, Eifel Holding S.à r.l., Eifel Management S.à r.l. & Partners S.C.A. and the Intra-Group Lenders;

"Mezzanine Facility Agreement" means the mezzanine facility agreement dated on or about the date of this Agreement and made between, amongst others, the Chargor, Kobusch Germany Holding GmbH as the Parent, Kobusch Germany 1 GmbH as Borrower, the entities listed therein as original guarantors, Citibank International Plc as the mezzanine agent, Citigroup Global Markets Limited as the mezzanine arranger, Commerzbank Aktiengesellschaft, Filiale Luxemburg as security agent and the persons named in that mezzanine facility agreement as Lenders (as amended and restated from time to time);

"Secured Obligations" means all the Liabilities (as defined in the Intercreditor Agreement) and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents (as such terms are defined in the Intercreditor Agreement), both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity undertaken to be discharged by the Chargor in Clause 2.1 (*Bond*) of this Instrument;

"Secured Parties" means the Security Agent, any Receiver or Delegate, the Senior Agent, the Senior Arrangers, the Senior Lenders, each Hedge Counterparty, the Mezzanine Agent, the Mezzanine Arranger and the Mezzanine Lenders from time to time party to the Intercreditor Agreement provided that in the case of the Senior Agent, the Mezzanine Agent, the Senior Lenders, the Mezzanine Lenders and each Hedge Counterparty, such person is party to or has acceded to the Intercreditor Agreement in accordance with its terms;

"Senior Facilities Agreement" means the EUR 104,750,000 facilities agreement dated on or about the date hereof and made between (amongst others), Kobusch Germany Holding GmbH as parent, Kobusch Germany 1 GmbH, Kobusch Germany 2 GmbH, Eifel Bidco Limited and Kobusch Sengewald GmbH as original borrowers, the guarantors listed therein, Landesbank Baden-Württemberg, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., Zweigniederlassung Frankfurt am Main., Deutsche Bank Nederland N.V., Commerzbank Aktiengesellschaft, and DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main as arrangers, Commerzbank

Aktiengesellschaft, Filiale Luxemburg as agent and the Original Lenders as defined therein; and

"the Security Subjects" means ALL and WHOLE the Chargor's interest in the leasehold subjects at 3 Young Square, Brucefield Industrial Park, Livingston, registered in the Land Register of Scotland under Title Number MID137815 together with (One) the whole buildings and erections thereon (Two) the fittings and fixtures therein and thereon (Three) the parts, privileges and pertinents thereof (Four) the whole rights common, mutual and exclusive effeiring thereto and (Five) the Chargor's whole right, title and interest, present and future, therein and thereto.

- 1.2 Unless otherwise stated or referred to in Clause 1.1, terms and expressions defined in the Intercreditor Agreement or in any other Debt Document shall have the same meaning in this Instrument.
- 1.3 Unless a contrary indication appears, any reference in this Instrument to:-
 - 1.3.1 **"the Chargor", "the Security Agent" and "the Secured Parties"** shall be construed so as to include their respective successors in title, assignees and permitted transferees and, in the case of the Security Agent, shall include any person for the time being the Security Agent under the Facility Agreements; and
 - 1.3.2 **"a person"** includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality).
- 1.4 Unless any provision of this Instrument or the context otherwise requires, any reference in this Instrument to a provision of law is a reference to that provision as amended or re-enacted.
- 1.5 In this Instrument the singular includes the plural and *vice versa*. Clause headings are for ease of reference only and a reference to a Clause is to be construed as a reference to a clause of this Instrument.
- 1.6 Any reference to, or to any specified provision of, this Instrument, any other Debt Document or any other document shall be construed as reference to, or to such specified provision of, this Instrument, such other Debt Document or such other document as in force for the time being and as amended, novated, supplemented, extended or restated (which, as the Chargor specifically agrees and acknowledges in relation to the Debt Documents may include, without limitation (i) any increase or reduction in any amount made available under the Debt Documents and/or any alteration and/or any addition to the purposes for which any such amount or increased or reduced amount may be used; (ii) any ancillary facilities provided in substitution for or in addition to the facilities originally made available under the Debt Documents; (iii) any rescheduling of the indebtedness incurred under the Debt Documents or change in the final repayment of such indebtedness, whether in isolation or in connection with any of the foregoing; (iv) any substitution of any existing borrower under the Debt Documents for any other borrower and/or any addition of any new borrowers

under the Debt Documents; and (v) any combination of any of the foregoing) in each case in accordance with the terms of the Debt Documents or, as the case may be, with the agreement of the relevant parties and (where any consents are required to be obtained as a condition to such amendment, novation, supplement, extension or restatement being permitted) with the requisite consents.

- 1.7 This Instrument is subject to the terms of the Intercreditor Agreement.
- 1.8 In this Instrument, the rules of interpretation contained in Clause 1.2 (*Construction*) of the Intercreditor Agreement shall apply to the construction of this Instrument.

2 BOND

- 2.1 The Chargor undertakes to the Security Agent to discharge each of the Secured Obligations on their due date in accordance with their respective terms.
- 2.2 If the Chargor fails to pay any sum on the due date for payment of that sum, interest shall accrue on the overdue amount (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of Clause 18.4 (*Interest on Demand*) of the Intercreditor Agreement.

3 CHARGE

The Chargor hereby in security of the Secured Obligations grants a standard security in favour of the Security Agent over the Security Subjects.

4 STANDARD CONDITIONS

The Chargor agrees that the Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 (the "1970 Act") shall be varied in so far as lawful and applicable by the Facility Agreements, under declaration that:-

- 4.1 in the event of there being any inconsistency between the Standard Conditions and a Facility Agreement, or
- 4.2 where there is an obligation in the Standard Conditions which is either more onerous than an equivalent obligation or is not contained in either of the Facility Agreements,

the terms of that Facility Agreement as applicable shall in so far as permitted by the 1970 Act prevail.

5 ENFORCEMENT

At any time on or after the occurrence of an Acceleration Event:-

- 5.1 the Chargor, shall be held to be in default within the meaning of Standard Condition 9 of the Standard Conditions; and
- 5.2 the Security Agent shall be able to take warrant of summary ejection against the Chargor, for the purposes of obtaining possession of the Security Subjects.

6 NOTICE OF SUBSEQUENT CHARGE

If the Security Agent or any other Secured Party receives notice of any subsequent charge or other interest affecting all or any part of the Security Subjects the Security Agent and each other Secured Party may open a new account or accounts in the name of the Chargor and, if or insofar as the Security Agent or such other Secured Party does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives such notice and as and from that time all payments made by the Chargor to the Security Agent (whether in its capacity as Agent or otherwise) or to another Secured Party shall, notwithstanding any instructions by the Chargor to the contrary, be credited or treated as having been credited to the new account or accounts and shall not operate to reduce the amount due by the Chargor to the Security Agent or such Secured Party at the time the notice was received.

7 APPLICATION OF ENFORCEMENT PROCEEDS

- 7.1 All monies received by the Security Agent under or by virtue of this Instrument following enforcement of the security hereby granted or of any security interest constituted pursuant hereto shall be applied, in accordance with Clause 13 (*Application of Proceeds*) of the Intercreditor Agreement.
- 7.2 Nothing contained in this Instrument shall limit the right of the Security Agent (and the Chargor acknowledges that the Security Agent are so entitled) if and for so long as the Security Agent, in its discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Instrument into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Obligations.

8 ASSIGNATION BY THE SECURITY AGENT

The Security Agent may assign and transfer all or any of its rights and obligations under this Instrument subject to Clause 17 (*Changes to the Parties*) of the Intercreditor Agreement. The Security Agent shall be entitled to disclose such information concerning the Chargors and this Instrument as the Security Agent considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

9 GOVERNING LAW AND JURISDICTION

- 9.1 **Scottish Courts**

The courts of Scotland have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of, or in connection with this Instrument (including a dispute relating to the existence, validity or termination of this Instrument or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Instrument).

9.2 Convenient Forum

The parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

9.3 Exclusive Jurisdiction

This Clause 9.3 is for the benefit of the Security Agent only. As a result and notwithstanding Clause 9.1 (*Scottish Courts*), it does not prevent the Security Agent from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Security Agent may take concurrent proceedings in any number of jurisdictions.

10 WARRANTICE AND CONSENT TO REGISTRATION

10.1 The Chargor hereby grants warrantice.

A certificate signed by any official, manager or equivalent account officer of the Security Agent shall, in the absence of manifest error, conclusively determine the Secured Obligations at any relevant time and shall constitute a balance and charge against the Chargor.

The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation: IN WITNESS WHEREOF these presents consisting of this and the preceding 6 pages are executed as follows:-

THE CHARGOR

SUBSCRIBED for and on behalf of
the said KOBUSCH UK LIMITED

at STANLEY

on 30th APRIL 2013

by KEN W EATEY
Print Full Name

KW Eatey
Director

before this witness

STEPHANIE HUGHES
Print Full Name

[Signature]
Witness

Address

14 CONE TERRACE

CHESTER-LE-STREET

DURHAM, DH3 3DH