



**Registration of a Charge**

Company Name: **BLUE DIAMOND ENGINEERING LIMITED**

Company Number: **02090988**



Received for filing in Electronic Format on the: **16/02/2023**

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**Details of Charge**

Date of creation: **09/02/2023**

Charge code: **0209 0988 0010**

Persons entitled: **INVESTACC PENSION TRUSTEES LIMITED  
CAROL JEAN BROWN  
JOHN CHARLES HEDLEY  
PAULINE VIRGINIA HEDLEY**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED  
AS PART OF THIS APPLICATION FOR REGISTRATION IS A  
CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **TRETHOWANS LLP**



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

Company number: 2090988

Charge code: 0209 0988 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th February 2023 and created by BLUE DIAMOND ENGINEERING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th February 2023 .

Given at Companies House, Cardiff on 17th February 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



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

Date: 9 FEBRUARY

2023

- (1) InvestAcc Pension Trustees Limited, Carol Jean Brown, John Charles Hedley and Pauline Virginia Hedley as Trustees of the Blue Diamond Engineering Limited Pension Scheme
- (2) Blue Diamond Engineering Limited

## CHATTEL MORTGAGE

**TRETHOWANS**

London Road  
Salisbury  
Wiltshire  
SP1 3HP  
Ref: JCB/INV1/84

THIS CHATTEL MORTGAGE is made the 9 day of FEBRUARY 2023

## PARTIES

- (1) **InvestAcc Pension Trustees Limited** (company number 02875892) whose registered office is at Minerva House, Port Road Business Park, Carlisle, CA2 7AF, **Carol Jean Brown** of Tigh Sona, Forgandenny, Perth, PH2 9EX and **John Charles Hedley and Pauline Virginia Hedley** both of 37 Foxglove Close, Newton Aycliffe, County Durham, DL5 4PF **all as Trustees of the Blue Diamond Engineering Limited Pension Scheme ("the Lender")**;
- (2) **Blue Diamond Engineering Limited** (company number 02090988) whose registered office is at Factory Bt 6/9, Shildon Industrial Estate, Shildon, County Durham, DL4 2QN ("**the Borrower**").

## BACKGROUND

- (A) The Lender has agreed to make available to the Borrower a loan facility pursuant to, and in accordance with, the provisions of the Loan Agreement (as defined in clause 1.1 below);
- (B) It is a condition precedent to the Lender making available funds to the Borrower under the Loan Agreement that the Borrower secures the payment obligations under the Loan Agreement; and
- (C) Accordingly, the Borrower has agreed to grant this deed on the terms set out below.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Defined terms

In this deed, unless the context otherwise requires:

- 1.1.1 '**the Act**' means the Law of Property Act 1925;
- 1.1.2 '**the Chattels**' means the goods or chattels, whether already acquired or hereafter to be acquired, specified in Schedule 1, (including any component parts of those assets from time to time held by the Borrower (whether or not attached to those assets)), together with all additions, alterations, substitutions, replacements, renewals or modifications of or to those assets from time to time, and all accessories to those assets from time to time (including maintenance and other records, manuals, handbooks, data, drawings and schematics relating to those assets or documents relating to warranties and patent indemnities given by manufacturers or suppliers of those assets).
- 1.1.3 '**Documents**' means all logbooks, maintenance records, record books, manuals, handbooks, drawings, technical data and all other documents relating to the Chattels;
- 1.1.4 '**the Expenses**' means:
  - (a) the money and costs referred to in clause 6.2; and

(b) the items of expenditure identified in clause 19.2;

- 1.1.5 **'Insurances'** means all contracts and policies of insurance or indemnity taken out by, or on behalf of, the Borrower, or to the extent of its interest, in which the Borrower has an interest and as are referred to in clause 5.1;
- 1.1.6 **'Insured Risks'** means all comprehensive risks cover relating to the Chattels and such other risks as the Lender may reasonably require;
- 1.1.7 **'the Loan Agreement'** means the loan agreement dated **9 FEBRUARY** 2023 and entered into between (1) the Lender as lender and (2) the Borrower as borrower whereby the Lender agrees to grant loan facilities to the Borrower;
- 1.1.8 **'the Mortgaged Property'** means the Chattels and all other rights, assets and property from time to time charged to the Lender under clause 3;
- 1.1.9 **'Receiver'** means an administrative receiver, receiver and manager or other receiver appointed in respect of the Mortgaged Property under this deed;
- 1.1.10 **'the Secured Sums'** means all present and future monies and liabilities whether certain or contingent from time to time due, owing or incurred by the Borrower to the Lender under, or in connection with, the Loan Agreement or this charge or any past and/or future loan agreement entered into between the Borrower and the Lender together with the Expenses on a full and unqualified indemnity basis and all interest which the Lender may charge or incur in relation to the Borrower or this deed;
- 1.1.11 **'Security Interest'** includes any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement or other security or arrangement or agreement of any kind or any right, including any 'hold-back' or 'flawed asset' arrangement conferring a priority of payment; and
- 1.1.12 **'the winding-up'** of a person also includes the amalgamation, reconstruction, reorganisation, dissolution, liquidation, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction, and a reference to the commencement of any of the foregoing includes a reference to the presentation of a petition to a court of competent jurisdiction or the passing of a valid resolution for, or with a view to, any of the foregoing.

## 1.2 Construction

In this deed;

- 1.2.1 the contents page and clause headings are included for convenience only and do not affect the construction of this deed;
- 1.2.2 words denoting the singular include the plural and vice versa; and
- 1.2.3 words denoting one gender include all genders.

### 1.3 Interpretation

In this deed, unless the context otherwise requires or unless otherwise expressly provided, references to:

- 1.3.1 persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, and trusts, in each case whether or not having a separate legal personality;
- 1.3.2 documents, instruments and agreements, including, without limitation, this deed and any document referred to in this deed, are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;
- 1.3.3 Receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
- 1.3.4 an authorisation includes references to an authorisation, consent, approval, resolution, licence, exemption, filing and registration;
- 1.3.5 a party to this deed includes references to its successors, transferees and assigns;
- 1.3.6 clauses and schedules are references to clauses of, and schedules to, this deed, and references to this deed include its schedules;
- 1.3.7 paragraphs, unless otherwise expressly provided, are references to paragraphs of the schedule in which the references appear;
- 1.3.8 subject to clause 9.5, statutory provisions are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.3.9 'a company' includes references to any company, corporation or other body corporate, wherever and however incorporated or established; and
- 1.3.10 'the Mortgaged Property' shall be references to all the Mortgaged Property and to each and/or every part of the Mortgaged Property and references to any other defined term or noun in the plural number or the collective plural shall be interpreted mutatis mutandis in the same manner.

### 1.4 Capitalised terms

Save as otherwise defined in this deed, defined terms used in this deed shall bear the same respective meanings as ascribed to them in the Loan Agreement.

### 1.5 Clawback

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

The Borrower covenants that the Borrower shall pay and discharge to the Lender on demand on the due dates therefore the Secured Sums and shall pay interest on the money so due in accordance with the provisions of the Loan Agreement.

**3 CHARGING PROVISIONS**

**3.1 Mortgage**

The Borrower with full title guarantee hereby charges in favour of the Lender as a continuing security with the payment and discharge of the Secured Sums by way of first legal mortgage:

3.1.1 the Chattels and the Documents;

3.1.2 without prejudice to clause 4.3, the benefit of all contracts and agreements, including all conditions and warranties, entered into at any time relating to the title, merchantable quality, fitness for purpose, description, condition, operation, use, servicing, maintenance or repair of the Chattels;

3.1.3 the full benefit of all Insurances from time to time in force in relation to the Mortgaged Property; and

3.1.4 any money payable to the Borrower for, or in connection with, a disposal by way of sale or otherwise of the Chattels, including any deposit, sum on account or instalment.

**4 GENERAL UNDERTAKINGS**

**4.1 Duration**

The undertakings contained in this clause and clause 5, and the general negative undertakings contained in clause 7 shall remain in full force and effect from the date of this deed and for so long as the Secured Sums remain outstanding

**4.2 Good repair and working order**

The Borrower shall keep the Chattels in a good state of repair and in good working order and condition and renew, service and overhaul the Chattels as necessary and comply with all relevant legal requirements necessary for the operation of the Chattels and not suffer the Chattels to deteriorate in condition or value, otherwise than in the normal course of operation.

**4.3 Defects**

The Borrower shall, in case of any defect in the title, merchantable quality, fitness for purpose, condition or failure to correspond with description of the Chattels or any parts of equipment supplied for incorporation in, or attachment to, the Chattels, whether such terms are contractual or statutory, and, notwithstanding clause 3.1.2, prosecute diligently all claims

available to the Borrower in respect of such defect or failure against the supplier, manufacturer or other person liable in respect thereof.

**4.4 Logbooks**

The Borrower shall maintain all logbooks, manuals, technical data and other materials and documents as are required by specific contracts, normal trade practice or by law to be maintained on, or with respect to, the Chattels.

**4.5 Licence to enter**

The Borrower shall grant the Lender and its representatives and agents a licence to enter the premises where any of the Chattels or the Documents is kept or believed to be kept for the purposes of inspection.

**4.6 Notice of security to third parties**

The Borrower shall ensure that all persons having any interest in the premises where any of the Chattels or the Documents is kept, whether such interest arises as lessor, lessee, mortgagee or otherwise, receive written notice of the Lender's interest as chargee.

**4.7 Proper maintenance**

The Borrower shall ensure that all services, replacements, inspections, maintenance, repairs, overhauls, tests improvements and modifications to be made or carried out to, or on, the Chattels are made or carried out by properly qualified personnel.

**4.8 No security interest**

The Borrower shall ensure that any replacements, modifications, renewals and additions to the Chattels are free of any Security Interest.

**4.9 Information**

The Borrower shall furnish the Lender with all such information regarding the Chattels and their location, use, operation, engagement and condition, including any material alterations, modifications and additions, and any proposed sale thereof as the Lender may, from time to time, request.

**4.10 Discharge of other restrictions over Chattels**

The Borrower shall pay and discharge as they fall due all debts, damages and liabilities which have given or may give rise to liens on, or claims enforceable against, the Chattels and, in the event of a detention of any of the Chattels in exercise or purported exercise of any such lien or claim as aforesaid, procure the release of them from such detention forthwith upon receiving notice of it.

**4.11 Rates, etc**

The Borrower shall pay punctually all costs, fees and expenses in respect of the Chattels, whether for operation, maintenance or otherwise, and produce to the Lender on demand evidence of payment.

**4.12 Lodging of documents: payment of disposal proceeds**

The Borrower shall deposit with the Lender:

4.12.1 if so required by the Lender, the Documents; and

4.12.2 all money received by the Borrower on a disposal of the Chattels and, in the meantime, hold all such moneys in trust for the Bank.

#### **4.13 Nameplates**

The Borrower shall, if so required by the Lender, affix to the Chattels or any part of them plaques, name plates, notices or other forms of wording of reasonable size and type in a readily visible position stating that the Lender has an interest in the Chattels as chargee.

#### **4.14 Notices received relating to Mortgaged Property**

The Borrower shall, forthwith upon receipt from any third party of any notice, or other matter whatsoever affecting or likely to affect the Mortgaged Property, give full particulars of it to the Lender and, if required, produce it to the Lender and shall, at the cost of the Borrower, forthwith either comply with the same or shall, at the request of the Lender and at the Borrower's cost, make or join with the Lender in making such objections or representations against, or in respect of, any such notice or other matter as aforesaid as the Lender shall deem expedient.

#### **4.15 Notice of damage**

The Borrower shall forthwith give written notice to the Lender of any material damage to any material item comprised within the Mortgaged Property.

#### **4.16 Indemnity**

Without prejudice to the provisions of clause 19.1, the Borrower shall keep the Lender, and any Receiver appointed by the Lender, fully and effectively indemnified from and against all actions, proceedings, costs, charges, claims, demands, expenses and liabilities, including VAT and any other taxes and/or legal and other professional fees, whatsoever in respect of any breach or non-observance or non-performance of any obligations on the part of the Borrower contained in this deed or the making good of any such breach or non-observance or non-performance.

#### **4.17 General**

The Borrower shall execute and do at the expense of the Borrower all such work and things whatsoever as may now or at any time during the continuance of this security be directed or required by any national or local or other competent authority to be executed or done upon, or in respect of, the Mortgaged Property.

#### **4.18 Compliance with laws and regulations**

4.18.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Chattels to be used in any way contrary to law.

4.18.2 The Borrower shall:

- (a) comply with the requirements of any law and regulation relating to or affecting the Chattels or the use of them or any part of them;

- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Chattels or their use or that are necessary to preserve, maintain or renew any Chattels; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Chattels.

#### **4.19 Enforcement of rights**

The Borrower shall use its best endeavours to:

- 4.19.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties; and
- 4.19.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Chattels that the Lender may require from time to time.

#### **4.20 Payment of outgoings**

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

#### **4.21 Compliance with covenants**

The Borrower shall observe and perform all covenants, stipulations and conditions to which any Chattels, or the use of them, is or may be subjected and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed.

### **5 INSURANCE UNDERTAKINGS**

#### **5.1 Insurance**

The Borrower shall effect and maintain, in such amounts and on such terms as the Lender may require, Insurances in respect of the Mortgaged Property covering the Insured Risks.

#### **5.2 Insurers**

The insurances shall be with reputable insurers and the Borrower shall procure the noting of the Lender's intended interest on each policy of Insurance.

#### **5.3 Mortgagee protection clauses**

The Borrower shall ensure that each policy of Insurance shall include such protection for the Lender against avoidance and invalidation as the Lender may reasonably require including a requirement on the part of the insurers to notify the Lender of any material change to the policy or reduction of cover, and the Borrower shall procure that the insurers shall, in connection with each such Insurance, confirm in writing to the Lender that:

- 5.3.1 the insurers will accept payment of all premiums from the Lender to prevent the policy lapsing in the event that the insured fails to make such payments;

- 5.3.2 the Lender shall not, in any circumstances, be liable for the relevant premiums;
- 5.3.3 all money payable by the insurers will be paid to the Lender;
- 5.3.4 to the extent aforesaid, the Lender shall alone be entitled to give a good discharge for money paid by the insurers under a policy of Insurance; and
- 5.3.5 the insurers will not permit the policy of Insurance to lapse or attempt to avoid the same without giving at least 28 days notice thereof to the Lender.

**5.4 Non avoidance of Insurances**

The Borrower shall not do or omit to do, or permit or suffer to be done or omitted to be done, anything that might render any Insurance void, voidable or unenforceable.

**5.5 Policies and receipts for premiums**

The Borrower shall, on demand, deposit with the Lender all policies of Insurance and the related premium receipts.

**5.6 Proceeds of insurance**

The Borrower shall pay or cause any money received from any policies of Insurance to be paid to the Lender, or if received by the Borrower, the Borrower shall forthwith pay such money to the Lender and until such payment shall hold the moneys on trust for the Lender, to be applied, at the option of the Lender either towards making good the loss or damage in respect of which the money was received or towards the discharge of the Secured Sums, which shall for such purpose be deemed to have become due and payable immediately following execution of this deed.

**5.7 Evidence of insurance**

The Borrower shall, upon the written request of the Lender, produce to the Lender evidence satisfactory to the Lender of the effecting of the Insurances and evidence that they remain in force.

**5.8 Failure to insure**

If at any time the Chattels are not insured in accordance with the provisions of this clause 5, or if the Borrower fails to produce any such evidence as aforesaid, the Lender shall be entitled, but not obliged, at the expense of the Borrower to insure the Chattels and keep them so insured during the continuance of this security, and the Borrower shall indemnify the Lender against any money expended by the Lender for that purpose and such money shall be secured by this security created by clause 3.1

**5.9 Use of Chattels**

The Borrower shall not use or allow the Chattels to be used for any purpose not permitted by the terms or conditions of any policy of Insurance for the time being relating to the Chattels nor do or omit to do or allow to be done or to be omitted to be done any act or thing whereby any such policy of Insurance may be invalidated.

## **6 CURING NON-PERFORMANCE**

### **6.1 Lender may cure breaches of covenants**

In the event of the failure of the Borrower to observe or perform the provisions of this deed, the Lender may do all such acts and things as may be necessary to secure the observance or performance thereof without thereby becoming liable as a mortgagee in possession.

### **6.2 Expenses so incurred**

All money expended and all costs incurred by the Lender in carrying out any of its discretions or powers referred to in clause 6.1 shall be considered to have been properly incurred by the Lender and shall be recoverable from the Borrower.

## **7 GENERAL NEGATIVE UNDERTAKINGS**

### **7.1 Winding-up**

The Borrower shall not, without the prior written consent of the Lender, enter into or commence any winding-up and shall not take any action that may prejudice its corporate existence and the right to carry on its business and operations.

### **7.2 Dealing with the Mortgaged Property**

The Borrower shall not, without the prior written consent of the Lender:

- 7.2.1 permit any of the Chattels to be removed from England and Wales;
- 7.2.2 purport to sell, offer for sale, transfer or assign the Mortgaged Property;
- 7.2.3 create, or attempt to create or permit to exist, any Security Interest upon the Mortgaged Property, including any Security Interest on land to which the Chattels may be fixed;
- 7.2.4 lease, let, hire or license, or permit to exist any lease, letting, hiring, conditional sale or hire purchase agreement in respect of, the Chattels;
- 7.2.5 allow, perform or consent to any act or omission to act which would or might cause the Chattels to be forfeited under any applicable law or which might jeopardise the Chattels;
- 7.2.6 allow the Chattels to be used in any trade or business contrary to any applicable law;
- 7.2.7 permit the Chattels to leave the possession of the Borrower, except for the purpose of necessary repair or maintenance, or to be used by any person for any purpose other than in connection with the trade or business of the Borrower; or
- 7.2.8 fix or allow to be fixed to the Chattels or to land, on which the Mortgaged Property is located, belonging to, or to be charged to, any person other than the Lender any object or thing in such manner that the Chattels cease to be hereby secured free of the right of any such owner or chargee.

## **8 SECURITY TO BECOME ENFORCEABLE**

### **8.1 Security enforceable**

The security constituted by this deed shall become enforceable at any time after the Lender has demanded payment of the Secured Sums, and immediately thereafter the Lender may, in respect of the Mortgaged Property, exercise the power of sale conferred upon mortgagees by section 101 of the Act without the restrictions imposed by section 103 of the Act as to the giving of notice or otherwise.

### **8.2 Right to enter land**

The Borrower grants to the Lender and to any Receiver the right without notice to enter upon any land or premises now owned or occupied or within 80 years of the date hereof acquired by the Borrower upon which the Mortgaged Property may from time to time be situate, whether fixed to the land or not, for the purposes of exercising the Lender's power of sale hereunder.

## **9 APPOINTMENT AND REMOVAL OF RECEIVER AND HIS POWERS**

### **9.1 Initial appointment**

Upon this security becoming enforceable, or at any time if so requested by the Borrower, the Lender may, subject to statutory restrictions, appoint any person or persons as Receiver or Receivers.

### **9.2 Removal and further appointment**

The Lender may:

9.2.1 remove any Receiver previously appointed hereunder; and

9.2.2 appoint any person or persons as Receiver or Receivers either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with a Receiver or Receivers previously appointed hereunder.

### **9.3 Exercise by joint receivers of powers etc**

If, at any time any two or more persons shall hold the office as Receivers, each such Receiver shall be entitled, unless the contrary be stated in any instrument appointing him, to exercise all the powers and discretions hereby conferred on Receivers individually and to the exclusion of the other or others of them.

### **9.4 Method of appointment**

Every such appointment or removal and every delegation, appointment or removal by the Lender in the exercise of any right to delegate its powers or to remove delegates herein contained may be made either by deed or by instrument in writing under the hand of any duly authorised officer of the Lender or any person so authorised in writing in that behalf by any such officer.

### **9.5 Powers**

A Receiver appointed in accordance with the foregoing provisions of this clause 9 shall, until his removal, have the powers conferred on receivers by section 109 of the Act and on

administrative receivers by schedule 1 to the Insolvency Act 1986 both as in force at the date of this deed, and, in addition, shall have power either in his own name or in the name of the Borrower:

- 9.5.1 to carry on, manage or concur in carrying on or managing the business of the Borrower as he may think fit in so far as it relates to the Mortgaged Property including, without limitation, power to perform, repudiate, rescind or vary any contracts or agreements;
- 9.5.2 to sell, let, lease, hire, license, enter into hire purchase agreements or concur in the selling, letting, leasing, hiring, licensing or entering into hire purchase agreements of the Chattels and to carry the same into effect in such manner as he thinks fit, whether or not in the name of the Borrower;
- 9.5.3 to repair, insure, protect, improve or replace the Chattels;
- 9.5.4 to appoint, employ or dismiss managers, officers, contractors or agents;
- 9.5.5 to have access to, and make use of, the premises, plant and equipment and accounting and other records of the Borrower and the services of its staff for the above purposes;
- 9.5.6 to do all other acts and things which he may consider desirable or necessary for realising the Mortgaged Property or incidental or conducive to the rights, powers or discretions conferred on a Receiver under or by virtue of this deed; and
- 9.5.7 to exercise in relation to the Mortgaged Property all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of the same.

## **9.6 Conflict**

If there is any ambiguity or conflict between the powers conferred on a Receiver by this clause 9 and by the Act or by Schedule 1 of the Insolvency Act 1986 the powers conferred by this clause 9 shall prevail.

## **10 APPLICATION**

### **10.1 Appropriation**

All money received by the Lender or a Receiver shall be applied in the following order:

- 10.1.1 in payment of the remuneration of the Receiver and the costs of realisation including all costs and expenses of, or incidental to, any exercise of any power hereby conferred,
- 10.1.2 when so required, in or towards satisfaction of the Secured Sums in such order as to principal, interest or the Expenses as the Lender or the Receiver shall, in his absolute discretion, determine, and the surplus, if any, shall be paid to the Borrower or such other person as may be entitled to it.

## **10.2 Variation of statutes**

Clause 10.1 shall take effect as and by way of variation and extension of sections 99 to 109 inclusive of the Act, which as so varied and extended shall be regarded as incorporated herein.

## **10.3 Suspense account**

The Lender may, in its absolute discretion at all times pending the payment to the Lender of the whole of the Secured Sums, place and keep to the credit of a separate or suspense account any money received by the Lender by virtue of this deed for so long and in such manner as the Lender may determine without any obligation to apply it or any part of it in or towards the discharge the Secured Sums.

## **11 RESPONSIBILITY FOR RECEIVER**

### **11.1 Agency**

The Receiver shall, at all times and for all purposes, be deemed to be the agent of the Borrower and the Borrower, to the exclusion of the Lender, shall be solely responsible for his acts or defaults.

### **11.2 Remuneration**

The Receiver shall be entitled to remuneration for his services and the services of his firm appropriate to the work and responsibility involved upon the basis of charging from time to time adopted by the Receiver or his firm and without being limited by the maximum rate specified in section 109(6) of the Act.

### **11.3 Level of remuneration**

From time to time, the Lender may, within the parameters referred to in clause 11.2, fix the remuneration of the Receiver and direct that such remuneration be paid from money accruing to the Receiver in the exercise of his powers as receiver, but the Borrower alone shall be liable for the payment of such remuneration.

## **12 POWERS OF THE LENDER AND THE RECEIVER**

### **12.1 Lender's powers**

All the powers, authorities and discretions conferred by this deed either expressly or impliedly upon the Receiver may be exercised by the Lender in relation to the Mortgaged Property without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **12.2 Powers to be additional**

The powers conferred by this deed in relation to the Mortgaged Property on the Lender or on the Receiver shall be in addition to, and not in substitution for, the powers conferred on mortgagees or receivers under the Act and the Insolvency Act 1986

## **13 DELEGATION OF POWERS**

The Lender may, at any time and from time to time, delegate by power of attorney or in any other manner, including without limitation, under the hand of any duly authorised officer of the Lender, to any person all or any of the powers, authorities and discretions that are, for the time

being, exercisable by the Lender under this deed, the Act or the Insolvency Act 1986 in relation to the Mortgaged Property, and any such delegation may be made upon such terms and conditions, including power to sub-delegate, and subject to such regulations as the Lender may think fit, but the Lender shall not be in any way liable or responsible to the Borrower for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

## **14 LIABILITY IN POSSESSION**

### **14.1 Possession**

If the Lender or the Receiver enters into possession of the Mortgaged Property, the Lender or the Receiver may, from time to time at will, go out of such possession.

### **14.2 Receipts**

The Lender shall not, in any circumstances by reason of it taking possession of, the Mortgaged Property or for any other reason whatsoever and whether as mortgagee in possession or on any other basis whatsoever:

14.2.1 be liable to account to the Borrower for anything except the Lender's own actual receipts;

14.2.2 be liable to the Borrower for any loss or damage arising from:

- (a) any realisation by the Lender of the Mortgaged Property, or
- (b) any act, default or omission of the Lender in relation to the Mortgaged Property, or
- (c) any exercise or non-exercise by the Lender of any power, authority or discretion conferred upon it in relation to the Mortgaged Property by, or pursuant to, this Deed, the Act or by the Insolvency Act 1986,

unless such loss or damage shall be caused by the Lender's own gross negligence or wilful default.

### **14.3 Extension to Receiver**

All the provisions of clause 14.2 shall apply in respect of the liability of the Receiver and in respect of the liability of any such delegate or sub-delegate as aforesaid in all respects as though every reference in clause 14.2 to the Lender were instead a reference to the Receiver or, as the case may be, to such delegate or sub-delegate.

## **15 PROTECTION FOR THIRD PARTY PURCHASERS**

### **15.1 Power of sale exercisable**

No person dealing with the Lender or with the Receiver or with any such delegate or sub-delegate as aforesaid shall be concerned to enquire whether any event has happened upon which any of the powers, authorities and discretions conferred by or pursuant to this deed in relation to the Mortgaged Property is or may be exercisable by the Lender, the Receiver, delegate or sub-delegate or otherwise as to the propriety or regularity of acts purporting or

intended to be in exercise of any such powers, and all the protection to purchasers contained in sections 104 and 107 of the Act shall apply to any person purchasing from, or dealing with, the Lender or the Receiver, delegate or sub-delegate in like manner as if the statutory powers of sale and of appointing a Receiver in relation to the Mortgaged Property had not been varied or extended by this deed.

**15.2 Power of sale arisen**

The powers conferred by section 101 of the Act, as varied and extended by this deed shall be deemed to have arisen immediately on the execution of this deed.

**16 FURTHER ASSURANCE AND POWER OF ATTORNEY**

**16.1 Further assurance**

The Borrower shall, at any time if and when reasonably required by the Lender, execute in favour of the Lender or as the Lender shall direct such further legal or other assignments, mortgages, securities or charges as the Lender shall require of, and on, the Mortgaged Property in order to secure the payment and discharge of the Secured Sums in so far as the Borrower is lawfully entitled so to do and subject to any third party consents that are required being obtained, which the Borrower shall use its best endeavours to do. The assignments, mortgages, securities or charges shall be prepared by, or on behalf of, the Lender at the cost of the Borrower and shall contain all such provisions as the Lender may reasonably require.

**16.2 Costs**

The assignments, mortgages, securities or charges shall be prepared by, or on behalf of, the Lender at the cost of the Borrower and shall contain all such provisions as the Lender may reasonably require.

**16.3 Attorney**

For the purpose of securing the interest of the Lender in the Mortgaged Property and for facilitating the realisation of the security constituted by this deed, the Borrower irrevocably and by way of security appoints the Lender and the Receiver to be its attorney, with full power to appoint delegates and to sub-delegate in both cases with regard to the Mortgaged Property, on its behalf and in its name or otherwise and as its act and deed to sign, execute and do any deed, document, act or thing the Borrower is or may become obliged to sign, execute and do under this deed or which the Lender or the Receiver may, in its or his absolute discretion, consider appropriate in connection with the exercise of any of the powers of the Lender or of the Receiver or the realisation of any security constituted by it.

**16.4 Ratification**

The Borrower shall upon first request of the Lender, ratify and confirm the actions the Lender or the Receiver or any delegate or sub-delegate carries out in its capacity as attorney for the Borrower as provided in clause 16.3; and the Lender, the Receiver, delegate or sub-delegate in its capacity as attorney may, on behalf of the Borrower, so ratify and confirm.

17      **NEW ACCOUNT**

If the Lender receives notice, either actual or constructive, of any Security Interest affecting the Mortgaged Property, the Lender may open a new account or accounts with the Borrower; if the Lender does not open a new account it shall nevertheless be treated as if it had done so at the time when it received notice or was deemed to have received notice, and, as from that time, all payments made by or on behalf of the Borrower to the Lender shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from the Borrower to the Lender at the time when it received notice or was deemed to have received notice.

18      **CONSOLIDATION AND SET-OFF**

18.1      **Combining of accounts**

The Lender shall have, in addition to any general lien or similar right, if any, to which it may be entitled by law, the right at any time or times and without notice to the Borrower, as well before as after any demand under this deed, to combine or consolidate all or any of the then existing accounts, including accounts in the name of the Lender, with any liabilities to the Lender of the Borrower.

18.2      **Set-off**

The Lender may set-off a matured obligation owed by the Borrower to the Lender under this deed, to the extent beneficially owned by the Lender, against any obligation whether or not matured owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the respective obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Lender may set-off in an amount estimated by it in good faith to be the amount of that obligation.

19      **INDEMNITIES AND EXPENSES**

19.1      **General indemnity**

The Borrower indemnifies the Lender, the Receiver and any manager, agent, officer or employee for whose liability, acts or omissions the Lender or the Receiver may be answerable and agrees to keep them indemnified, from and against all liabilities, costs, charges, losses and expenses suffered or incurred by them arising from or as a result of:

- 19.1.1      the exercise or the purported exercise of any powers, authorities or discretions vested in any of them pursuant;
- 19.1.2      any matter or thing done or omitted or in any way relating to this deed;
- 19.1.3      any breach by the Borrower of its obligations to the Lender under this deed;
- 19.1.4      the enforcement of this deed; or
- 19.1.5      any action, claim or proceeding relating to any of the above,

except to the extent that the same results from the gross negligence or wilful default of the Lender, the Receiver or such manager, agent, officer or employee.

## **19.2 Identification of expenses**

The Borrower shall, in accordance with clause 19.3, pay to the Lender the following items of expenditure:

19.2.1 on a full indemnity basis all expenses including legal and out-of-pocket expenses incurred by the Lender in connection with:

- (a) the preparation, negotiation and execution of this deed;
- (b) the preparation and negotiation of documentation relating to any amendment or extension of this deed, regardless of the form which such documentation takes and whether or not such documentation is acceptable to, and/or executed by, any or all parties thereto;
- (c) the granting of any waiver, approval, consent, confirmation or release under, or in respect of, this deed; and
- (d) any investigation or due diligence into the financial or other condition of the Borrower or into ascertaining whether or not the Borrower has complied or is complying with this deed,

together with interest as set out in the Loan Agreement from the date such expenses were incurred to the date of payment, as well after as before judgment;

19.2.2 an amount equal to any stamp duties, search fees, registration fees and duties payable in connection with this deed and any penalties with respect to, or resulting from the delay or omission to pay any such duties or fees; and

19.2.3 all expenses, including legal and out of pocket expenses on a full indemnity basis, incurred by the Lender:

- (a) in contemplation of, or otherwise in connection with, the enforcement of any rights or exercise of any powers under this Deed or in investigating any possible breach by the Borrower of this Deed; or
- (b) in respect of any proceedings, legal or otherwise, involving the Lender in connection with this deed or the Mortgaged Property, whether such proceedings are brought by the Borrower or a third party,

together with interest as set out in the Loan Agreement from the date such expenses were incurred to the date of payment, as well after as before judgment.

## **19.3 Payment of expenses**

The Borrower shall, on first demand, pay or reimburse the Lender for the Expenses.

## **19.4 Interest on defaulted payments**

If any sums that are payable by the Borrower but have not been paid by the Borrower are paid by the Lender or the Receiver, they shall be repaid by the Borrower on demand together with

interest as set out in the Loan Agreement from the time of their being paid or incurred by the Lender or the Receiver to the time that payment is made in full by the Borrower, as well after as before judgment or demand for them.

**20 MISCELLANEOUS**

**20.1 Additional security**

The security created by this deed is in addition to any other security the Lender may now or from time to time hold or take from the Borrower.

**20.2 Continuing security**

This deed shall be a continuing security to the Lender notwithstanding any intermediate payment or settlement of account or any other matter whatever, and shall be in addition to, and shall not prejudice or be prejudiced by, any right of lien, set-off, combination or other rights exercisable by the Lender as banker against the Borrower or any security, guarantee, indemnity and/or negotiable instrument now or in the future held by the Lender.

**20.3 No merger**

Nothing contained in this deed shall operate so as to merge or otherwise prejudice or affect any bill, note, guarantee, mortgage or other security or any contractual or other right the Lender may at any time have for any money or liabilities or other sums due or incurred by the Borrower to the Lender or any right or remedy of the Lender under this deed and any receipt, release or discharge of the security provided by, or of any liability arising under, this deed shall not release or discharge the Borrower from any liability to the Lender for the same or any other moneys which may exist independently of this deed.

**20.4 Conditional discharge**

Any release, settlement or discharge between the Lender and the Borrower shall be conditional upon no security, disposition or payment to the Lender by the Borrower or any other person being avoided, set aside, reduced or ordered to be refunded by virtue of any statutory provision relating to insolvency or liquidation for the time being in force or for any reason whatsoever. If the same is so avoided, set aside, reduced or ordered to be refunded, the Lender shall be entitled to recover the value or amount of any such security or payment from the Borrower subsequently as if such settlement or discharge had not occurred.

**20.5 Final redemption**

Subject to and without prejudice to clause 20.4, once the Lender is satisfied that all the Secured Sums have been discharged in full and all facilities that might give rise to the Secured Sums have been terminated, and the Lender is satisfied that it has no further obligation whether actual or contingent to make any credit or other accommodation available to the Borrower under the Loan Agreement, then the Lender shall, at the request and cost of the Borrower, execute and do all such deeds, acts and things as may be necessary to release the Mortgaged Property from the mortgages and charges constituted by clause 3.1.

**20.6 Prior Security Interests**

The Lender and a Receiver may redeem any prior Security Interest and may settle and prove the accounts of the encumbrancer of that prior Security Interest, and accounts so settled and proved shall be conclusive and binding on the Borrower and the money so paid shall be a receivership expense and be secured by this deed.

**20.7 Counterparts**

This deed may be executed in any number of counterparts and this has the same effect as if the signatures on the separate counterparts were on a single copy of this deed.

**20.8 Assignments**

The Borrower may not assign any of its rights under this deed.

**20.9 Law of Property Act**

The restriction on consolidation of mortgages contained in section 93 of the Act shall not apply to this security.

**20.10 Certification**

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

**20.11 Waivers, remedies cumulative**

The rights of the Lender under this deed:

20.11.1 may be exercised as often as necessary;

20.11.2 are cumulative and not exclusive of its rights under the general law; and

20.11.3 may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

**21 SEVERABILITY**

If any provision of this deed is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not effect:

21.1 the validity or enforceability in that jurisdiction of any other provision of this deed; or

21.2 the validity or enforceability in any other jurisdiction of that or any other provision of this deed.

## **22 NOTICES**

### **22.1 Time of receipt**

Except as otherwise stated in this deed, all demands, notices or other communications ('Notice') under this deed to either party shall be made by letter or fax and shall be deemed to be duly given or made when:

- 22.1.1 delivered to, in the case of a letter delivered personally,
- 22.1.2 received by, in the case of the hard copy of a notice or other communication sent by fax,
- 22.1.3 two days after being put in the first class post postage prepaid, in the case of post, addressed to the relevant party, sent to it at
- 22.1.4 in the case of the Lender, its address set out in clause 22.2.1,
- 22.1.5 in the case of the Borrower, its address set out in clause 0.
- 22.1.6 such address as either party may, after the date of this deed specify to the other for such purpose by not less than five days' notice.

### **22.2 Addresses**

22.2.1 The Lender's address for notices as at the date of this deed are:

Minerva House, Port Road Business Park, Carlisle, CA2 7AF

22.2.2 The Borrower's address for notices as at the date of this deed are:

Factory Bt 6/9, Shildon Industrial Estate, Shildon, County Durham, DL4 2QN

### **22.3 Non-working days**

A Notice received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in that place.

## **23 LAW AND JURISDICTION**

This deed shall be governed by English law, and the Borrower irrevocably submits for the benefit of the Lender to the jurisdiction of the English courts.

## **24 REPRESENTATIONS AND WARRANTIES**

### **24.1 Representations and Warranties**

The Borrower makes the representations and warranties set out in this clause 24 to the Lender.

### **24.2 Ownership of Secured Assets**

The Borrower is the legal and beneficial owner of, and has good, valid and marketable title to the Chattels.

**24.3 No Security**

The Chattels are free from any security other than the security created by this deed.

**24.4 No adverse claims**

The Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

**24.5 No fixing**

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

**24.6 No adverse covenants**

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

**24.7 No breach of laws**

There is no breach of any law or regulation, which materially and adversely affects the Chattels.

**24.8 No interference in enjoyment**

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

**24.9 Avoidance of security**

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

**24.10 Environmental compliance**

The Borrower has, at all times, complied in all material respects with all applicable environmental law.

**24.11 Enforceable security**

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

**25 Limitation of Liability**

Notwithstanding any provision to the contrary herein contained or at all, the liability of InvestAcc Pension Trustees Limited shall not be personal but shall be limited to the extent of the assets for the time being of the Blue Diamond Engineering Limited Pension Scheme and further InvestAcc Pension Trustees Limited shall have no such liability after it ceases to be a trustee of the Blue Diamond Engineering Limited Pension Scheme.

**IN WITNESS** whereof the parties hereto have executed this document as a deed the day and year first  
before written

## **SCHEDULE 1**

### **Details of the Chattels**

Hartford PBM115A CNC Horizontal Boring machine. Heidenhain iTNC530 CNC Control. Serial no 019210

Hartford power Centre Pro1000 CNC Vertical milling machine. FANUC OiMF Control. Serial 023507

Hartford HCMC2082 CNC Vertical milling machine. FANUC OiMF Control. Serial 024907

Executed as a Deed by InvestAcc  
Pension Trustees Limited acting by two  
Directors or by a Director and the  
Secretary:

  
Director

Director/Secretary

Signed as a Deed by Carol Jean Brown  
in the presence of:



Witness's signature

*LChambers*

Name

LYNN CHAMBERS

Address

4 RAVENSGARTH DRIVE

DARLINGTON

DL3 8EH

Occupation

HR MANAGER

Signed as a Deed by John Charles  
Hedley in the presence of:



Witness's signature

*LChambers*

Name

LYNN CHAMBERS

Address

4 RAVENSGARTH DRIVE

DARLINGTON

DL3 8EH

Occupation

HR MANAGER

Signed as a Deed by Pauline Virginia  
Hedley in the presence of:

*PV Hedley*

Witness's signature

*L Chambers*

Name

*LYNN CHAMBERS*

Address

*4 RAVENS CARTH DRIVE*

*DARLINGTON*

*DL3 8EH*

Occupation

*HR MANAGER*

Executed as a Deed by Blue Diamond  
Engineering Limited acting by a Director  
in the presence of:

*P. J. Brazz*  
Director

Witness's signature

*L Chambers*

Name

*LYNN CHAMBERS*

Address

*4 RAVENSCARTH DRIVE*

*DARLINGTON*

*DL3 8EH*

Occupation

*HR MANAGER*

