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\* insert full name  
of company

## COMPANIES FORM No. 395

### Particulars of a mortgage or charge

# 395

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies

For official use

Company number



3573271

Name of company

\* INHOCO 788 LIMITED (the "Company")

Date of creation of the charge

7 August 1998

Description of the instrument (if any) creating or evidencing the charge (note 2)

A debenture (the "Debenture") dated 7 August 1998 and made between the Company and The Fuji Bank, Limited and given in favour of The Fuji Bank, Limited as trustee for the Beneficiaries (the "Security Trustee").

Amount secured by the mortgage or charge

Each and every liability subject to Schedule 2 which the Company may have had at the time the Debenture was entered into or which arises thereafter, to the Security Trustee (whether for its own account or as trustee for the Beneficiaries) or to any of the other Beneficiaries (and whether solely or jointly with one or more persons and whether as principal or as surety) under or pursuant to the Finance Documents (including the Debenture) including any liability in respect of any further advances made under the Finance Documents and pay to the Security Trustee when due and payable every sum (of principal, interest or other costs amounts due) at the time the Debenture was entered into or thereafter owing, due or incurred by the Company to the Security Trustee (whether for its own account or as trustee for the Beneficiaries) or any other Beneficiaries in respect of any such liabilities (the "Secured Obligations").

Names and addresses of the mortgagees or persons entitled to the charge

The Fuji Bank, Limited, River Plate House, 7-11 Finsbury Circus, London, EC2M 7DH as Security Trustee for the Beneficiaries.

Presentor's name address and  
reference (if any):

Clifford Chance  
200 Aldersgate Street  
London  
EC1A 4JJ

LNKG/SPXW/F667/4565/CP

Time critical reference

For official use

Mortgage Section

Post room



, Short particulars of all the property mortgaged or charged

See Schedule 3.

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95.

Particulars as to commission allowance or discount (note 3)

None

Signed Maguino J. B. K. / Clifford Date 25.8.98

On behalf of ~~[company]~~ [mortgagee/chargee] †

† delete as  
appropriate

## NOTES

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the Registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his;  
(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or  
(b) procuring or agreeing to procure subscriptions, whether absolute or conditional,  
for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.

*Schedules to Form 395 relating to the Debenture entered into by INHOCO 788 Limited (Company No. 3573271) dated 7 August 98;*

## **SCHEDULE 1**

### **Definitions**

In this Form 395;

**"Acquisition"** means the Acquisition by the Parent of the entire issued share capital of Heywood Williams Automotive Limited;

**"Additional Borrower"** means any company which has become an Additional Borrower by execution of a Borrower Accession Memorandum pursuant to the Senior Facility Agreement;

**"Ancillary Facility"** means the Ancillary Facilities available pursuant to the Senior Facility Agreement;

**"Beneficiaries"** means each of the Security Trustee, the Senior Facility Agent, Senior Facility Arranger, Senior Lenders, Senior Facility Hedge Counterparties, Mezzanine Hedge Counterparties, Mezzanine Agent, Mezzanine Arrangers, Mezzanine Lenders and their respective successors, assigns and transferees from time to time;

**"Borrower Accession Memorandum"** means a memorandum substantially in the form set out in the Seventh Schedule of the Senior Facility Agreement by which a subsidiary of Inhoco 788 Limited may accede as a borrower under the Senior Facility Agreement;

**"Cash Advance"** means Working Capital Utilisation drawn down in cash by Working Capital Borrower pursuant to Clause 4 of the Senior Facility Agreement;

**"Closing Date"** means such day between 24 August 1998 and before September 1998, when the Acquisition is completed in accordance with the terms of the sale and purchase agreement, or such other date as agreed by the Parent and the Senior Facility Agent;

**"Contracts"** means the Contracts listed in Part B of the Sixth Schedule to the Debenture;

**"Documents"** means the sale and purchase agreement dated 7 August 1998 and made between Heywood Williams Group plc and Inhoco 788 Limited for the sale of the entire issued share capital of Heywood Limited Automotive Limited and the Taxation Deed in the form scheduled to the sale and purchase agreement to be entered into between Heywood Williams Group plc and Inhoco 788 Limited;

**"Excluded Contracts"** means those contracts entered into by Heywood Williams Automotives Limited or any other member of the Group, as a lessee of vehicles, to the extent that such a finance lease may contain any restrictions on the charging or assigning of such lessees rights in respect of such vehicles;

**"Finance Documents"** means the Senior Facility Agreement, the Mezzanine Facility Agreement, any Borrower Accession Memorandum, Senior Facility Guarantor Accession Memorandum, Mezzanine Guarantor Accession Memorandum, the Senior Facility Security Documents, the Mezzanine Security Documents, the Intercreditor Deed, the Senior Facility Hedging Agreement, the Mezzanine Hedging Agreement any documentation evidencing the Ancillary Facilities to be provided pursuant to Clause 2.1 (iv) of the Senior Facility Agreement and any ancillary documentation, any fee letters and any ancillary documentation and any other document designated as a Finance Document by the Parent and the Senior Facility Agent in writing;

**"Fronting Bank"** means The Fuji Bank, Limited or any other bank with a Working Capital Commitment or with an interest in the working capital loan if The Fuji Bank, Limited resigns as the Fronting Bank;

**"Group"** means the Parent and its subsidiaries for the time being;

**"Holding Account"** means the account set out in Part 1 of the Eleventh Schedule to the Debenture and such other separate and denominated account or accounts with the Security Trustee or such other bank or banks as may from time to time be specified in writing as the Holding Account;

**"Insurance"** means the Life Policies and the Non-Life Policies;

**"Intellectual Property"** means:

- (a) the intellectual property rights specified in the Sixteenth Schedule to the Senior Facility Agreement; and
- (b) any and all interests in logos and slogans currently owned or used from time to time by the Target Group;

**"Inter-Company Loan Agreement"** means the agreement dated on the Closing Date between the Parent, Heywood Williams Automotive and subsidiaries from time to time to permit loans between such persons on an arms' length basis in such amounts as the Directors of such persons shall determine is in the best interests of such person from time to time;

**"Intercreditor Deed"** means the deed dated 7 August 1998 between The Fuji Bank, Limited as Security Trustee, Senior Facility Agent, Senior Facility Arranger, Senior Lender, Mezzanine Arranger and Mezzanine Lender and HSBC Investment Bank plc as Mezzanine Arranger, Mezzanine Agent and Mezzanine Lender and Inhoco 788 Limited as Mezzanine Borrower and Parent;

**"Intra-Group Loans"** means:

- (a) the Intra-Group Loans made or to be made between Inhoco 788 Limited and Heywood Williams Automotive Limited pursuant to the Inter-Company Loan Agreement to be entered into but without limitation, those loans details (if any) of which are set out in the Seventh Schedule to the Debenture; and
- (b) any debt or loans in existence at any time between members of the Group;

**"Investments"** means stocks, shares, debentures and other securities to which the Company may now or hereafter have an interest together with all rights to and relating to stocks, shares (including all and any rights to dividends and distributions in relation thereto), debentures or other securities or any other assets, rights or interests falling within any paragraph in Part 1 of Schedule 1 to the Financial Services Act 1986 as in force at the date hereof but so that the exceptions in the notes to paragraphs 2 and 5 and note (1) to paragraph 8 of the Part shall not apply;

**"Key-Man Policies"** means the key-man insurance policies to be taken out or which have been taken out by the Parent in accordance with Clause 20.26(i) of the Senior Facility Agreement, over the lives of (i) Mark Usher and (ii) Simon Russell, in form and substance satisfactory to the Senior Facility Agent for £1,000,000 and £250,000 respectively and, initially, for a period of at least 3 years;

**"Letter of Credit"** means a Letter of Credit issued or to be issued by a Fronting Bank pursuant to Clause 4 of the Senior Facility Agreement substantially in the form of Schedule 12 or in some other form requested by the Working Capital Borrower which is acceptable to the Senior Facility Agent under the Fronting Bank;

**"Life Policies"** means Key-Man Policies and any other policies of life insurance or assurance in which the Company may now or hereafter have an interest;

**"Mezzanine Additional Guarantor"** means any company which becomes a guarantor by execution of a Mezzanine Guarantor Accession Memorandum pursuant to the Mezzanine Facility Agreement;

**"Mezzanine Agent"** means HSBC Investment Bank plc;

**"Mezzanine Arrangers"** means HSBC Investment Bank plc and The Fuji Bank, Limited;

**"Mezzanine Borrower"** means Inhoco 788 Limited;

**"Mezzanine Facility Agreement"** means the £10,000,000 term credit agreement dated 7 August 1998 between Inhoco 788 Limited as Mezzanine Borrower, HSBC Investment Bank

plc as Mezzanine Agent, Mezzanine Arranger and Mezzanine Lenders and The Fuji Bank, Limited as Mezzanine Arranger, Security Trustee and Mezzanine Lenders;

**"Mezzanine Guarantor"** means each of the Parent and each Mezzanine Additional Guarantor provided that such company has not ceased to be a guarantor;

**"Mezzanine Guarantor Accession Memorandum"** means a memorandum substantially in the form set out in the Sixth Schedule to the Mezzanine Facility Agreement by which a subsidiary shall become a guarantor under the Mezzanine Facility Agreement;

**"Mezzanine Hedge Counterparty"** means The Fuji Bank, Limited and/or any other party acceptable to the Mezzanine Agent;

**"Mezzanine Hedging Agreement"** means the ISDA master agreement schedule and confirmation between Inhoco 788 Limited and the Mezzanine Hedge Counterparty in a form and substance satisfactory to the Mezzanine Agent and the Mezzanine Hedge Counterparty;

**"Mezzanine Lenders"** means The Fuji Bank, Limited and HSBC Investment Bank plc and any other person that may become a party to the Mezzanine Facility Agreement in accordance with the terms thereof and referred to therein as a Bank;

**"Mezzanine Security Documents"** means the following:

- (a) the Debenture;
- (b) the debenture from Heywood Williams Automotive Limited securing *inter alia* the secured liabilities as defined in the debenture in agreed form;
- (c) any accession deed to the Debenture by the Mezzanine Guarantor or Mezzanine Additional Guarantor;
- (d) any other encumbrance requested by the Mezzanine Agent or Security Trustee to be granted by any member of the Group to be granted to the Security Trustee for the benefit of *inter alia* the Mezzanine Lenders, from time to time; and
- (e) any other document or agreement designated to a "Security Document" in writing by the Security Trustee and the Mezzanine Agent;

**"Non-Life Policies"** means the policies of insurance (other than the Life Policies) in which the Company may now or hereafter have an interest;

**"Parent"** means Inhoco 788 Limited;

**"Real Property"** means all estates and other interests in freehold, leasehold and other immovable property wheresoever situate now or hereafter belonging to the Company (including the registered and unregistered land, if any, in England, Wales, Northern Ireland and the Scottish Property) of which the Company is a registered proprietor or owner, and all building, trade and other fixtures, fixed plant and machinery from time to time on any such freehold, leasehold, or other immovable property;

**"Scottish Property"** means the property identified in Part D of the First Schedule to the Debenture;

**"Secured Liabilities"** means all Secured Obligations;

**"Security Trustee"** means The Fuji Bank, Limited;

**"Senior Facility Additional Guarantor"** means any company which becomes a guarantor by execution of a Senior Facility Guarantor Accession Memorandum pursuant to the Senior Facility Agreement;

**"Senior Facility Agent"** means The Fuji Bank, Limited;

**"Senior Facility Agreement"** means the £40,000,000 term and working capital credit agreement dated 7 August 1998 and made between Inhoco 788 Limited as Parent, Senior Facility Borrower, and as original guarantor and The Fuji Bank, Limited as Senior Facility Agent, Senior Facility Arranger, Security Trustee and Senior Facility Bank;

**"Senior Facility Arranger"** means The Fuji Bank, Limited;

**"Senior Facility Bank"** means The Fuji Bank, Limited;

**"Senior Facility Borrower"** means Inhoco 788 Limited and Heywood Williams Automotive Limited and each Additional Borrower **provided that** such company has not ceased to be a borrower;

**"Senior Facility Guarantor"** means the Parent and each Senior Facility Additional Guarantor **provided that** such company has not ceased to be a guarantor;

**"Senior Facility Guarantor Accession Memorandum"** means a memorandum substantially in the form set out in the Eighth Schedule to the Senior Facility Agreement by which a subsidiary may become a guarantor under the Senior Facility Agreement;

**"Senior Facility Hedge Counterparty"** means The Fuji Bank, Limited and/or any other party acceptable to the Senior Facility Agent;

**"Senior Facility Hedging Agreement"** means the ISDA master agreement, schedule and confirmation between Inhoco 788 Limited and the Senior Facility Hedge Counterparty in a

form and substance satisfactory to the Senior Facility Agent and the Senior Facility Hedge Counterparty;

**"Senior Facility Security Documents"** means the following:

- (a) The Debenture;
- (b) The debenture from Heywood Williams Automotive Limited securing all obligations of Heywood Williams Automotive Limited as Senior Facility Guarantor and as Senior Facility Borrower of the Working Capital Facility pursuant to the Senior Facility Agreement and in respect of secured liabilities as defined in the debenture in agreed form;
- (c) Any accession deed to the Debenture or debenture set out in (b) above by an Additional Borrower under any Senior Facility Additional Guarantor;
- (d) Any other encumbrance requested by the Senior Facility Agent or Security Trustee to be granted by any member of the Group to be granted to the Security Trustee for the benefit of *inter alia* the Senior Facility Bank, from time to time; and
- (e) Any other document or agreement designated as "Security Document" in writing by the Security Trustee and the Senior Facility Agent;

**"Senior Lenders"** means The Fuji Bank, Limited and any other financial institution that becomes a party to the Senior Facility Agreement in accordance with the terms of the Senior Facility Agreement referred to as Bank therein;

**"Special Accounts"** means those accounts set out in Part 2 of the Eleventh Schedule to the Debenture and such separate and denominated account or accounts with the Security Trustee or such other bank or banks as may from time to time be specified in writing by the Security Trustee as the account or accounts over which the Security Trustee would wish to take a fixed charge;

**"Subsidiary Shares"** means shares in any subsidiary including shares in any joint venture;

**"Tangible Moveable Property"** means all plant and machinery of a value in excess of £50,000 not charged pursuant to Clause 3.1(a)(ii) of the Debenture and all other chattels now or at any time hereafter belonged to the Company (excluding any of the same for the time being forming part of its stock in trade or work in progress);

**"Target Group"** means Heywood Williams Automotive Limited and its subsidiaries;

**"Working Capital Borrower"** means Heywood Williams Automotive Limited and any additional Working Capital Borrower;



**"Working Capital Commitment"** means, in relation to a bank at any time and save as otherwise provided herein, the amount set opposite its name under the heading "Working Capital Commitment" in the First Schedule to the Senior Facility Agreement;

**"Working Capital Facility"** means the senior working capital facility in an aggregate amount of £5,000,000 incorporating:

- (a) a revolving facility;
- (b) Ancillary Facilities;
- (c) letter of credit facility;
- (d) guarantee facility as set out in Clause 4 of the Senior Facility Agreement and granted pursuant to Clause 2.1 (iii) of the Senior Facility Agreement;

**"Working Capital Utilisation":**

- (a) a Cash Advance; or
- (b) Letter of Credit; or
- (c) guarantee; or
- (d) Ancillary Facilities made available by the banks, or any of them to Working Capital Borrower.

## **SCHEDULE 2**

### **Amount Secured by the Mortgage or Charge**

Amount detailed in form M395 provided that there shall be excluded any liability or sum which would, but for this proviso, cause the security which would otherwise be constituted by the Debenture for such liability or sum to constitute unlawful finance assistance prohibited by Section 151 of the Companies Act 1985 and every payment by the Company of any sum in respect of the liabilities covenanted to be discharged by the Company to or for the account of the Beneficiaries to whom the same is due and payable, which is made in accordance with the terms of the Finance Document under which such sum is payable to such Beneficiaries shall operate in satisfaction pro tanto of such covenant.

### SCHEDULE 3

#### Short Particulars of all the Property Charged

1. **Assignment, Fixed and Floating Charges.**

1.1. The Company:

(a) **Fixed Charges.**

has charged by way of fixed charge each of the following, namely:

- (i) **Land:** Real Property excluding the Scottish Property;
- (ii) **Tangible Moveable Property:** all the Tangible Moveable Property not assigned pursuant to Clause 3.1 (b)(ii) of the Debenture;
- (iii) **Accounts with the Security Trustee:** all rights and claims to which the Company at the time the Debenture was entered into or thereafter was entitled in relation to all moneys at the time the Debenture was entered into or thereafter standing to the credit of the bank accounts (including any Special Accounts) opened or maintained with the Security Trustee together with all rights relating or attaching thereto (including the right to interest);
- (iv) **Holding Account:** all rights and claims to which the Company at the time of the Debenture was entered into or thereafter was entitled in relation to all moneys at the date of the Debenture or thereafter standing to the credit of the Holding Account together with all rights relating or attaching thereto (including the right to interest);
- (v) **Intellectual Property:** the Intellectual Property;
- (vi) **Goodwill:** all goodwill (including all brand names not otherwise subject to a fixed charge or assignment by or pursuant to the Debenture at the time the Debenture was entered into and thereafter belonging to the Company;

(b) **Assignments**

has assigned to the Security Trustee as trustee for the Beneficiaries all its right, title and interest in and to each of the following:

- (i) **Property Rights:** all rights and claims to which the Company at the time the Debenture was entered into or thereafter was entitled in relation to the Real Property and the Tangible Moveable Property including those against any manufacturer, supplier or installer of such property, any builder, contractor or professional adviser engaged in relation to any such property and any lessee, sub-lessee or licensee of any of the Real Property and any guarantor or surety for the obligations of such person but excluding those in relation to the Contracts and, to the extent that any of the Tangible Moveable Property at the time the Debenture was entered into or thereafter was hired, leased or rented to any other person (so far as is permissible under the hiring, leasing or rental agreement), the rights under the hiring, leasing or rental agreement and any guarantee, indemnity or security for the performance of the obligations of such person and any other rights and benefits relating thereto;
- (ii) **Tangible Moveable Property:** the Tangible Moveable Property;
- (iii) **Insurance:** the Life Policies (provided always that the proceeds of any Life Policies shall be paid into the Holding Account and any release of such proceeds from the Holding Account shall be subject to the prior written consent of the Security Trustee) and all rights and claims to which the Company at the time the Debenture was entered into or thereafter was entitled in relation to the proceeds of any of the Non-Life Policies;
- (iv) **Debts:** all present and future book and other debts and monetary claims at the time the Debenture was entered into or thereafter due or owing to the Company (including, without limitation, claims due when the Debenture was entered into or thereafter due or owing to the Company in respect of any Intra-Group Loans) which are not otherwise subject to a fixed charge or assigned (whether at law or in equity) to the Security Trustee by or pursuant to the Debenture and all rights relating thereto including any securities or remedies therefor;
- (v) **Accounts with another Bank:** all rights and claims to which the Company at the time the Debenture was entered into or thereafter was entitled in relation to all moneys at the time the Debenture was entered into or thereafter standing to the credit of any bank accounts (including any Special Accounts) opened or maintained with a bank other than the Security Trustee and all rights relating or attaching thereto (including the right to interest);
- (vi) **Investments:** all Investments to which the Company at the time the Debenture was entered into or thereafter was entitled including the Investments listed in Part B of the Third Schedule to the Debenture;

- (vii) **Uncalled Capital:** all rights and claims to which the Company at the time the Debenture was entered into or thereafter was entitled in relation to its Uncalled Capital;
  - (viii) **The Documents:** all right of the Company under or in respect of the Documents;
  - (ix) **Section 238, 239 and 244 Orders:** all rights to which the Company at the time the Debenture was entered into or thereafter was entitled in respect of the proceeds of any order of the court made pursuant to sections 238 (3), 239 (3) or 244 of the Insolvency Act 1986;
  - (x) **Subsidiary Shares:** all Subsidiary Shares to which the Company at the time the Debenture was entered into or thereafter is entitled including the 2,000,000 Ordinary Shares of £1 each in Heywood Williams Automotive Limited to be acquired pursuant to the sale and purchase agreement;
  - (xi) **The Contracts:** in equity to the Security Trustee as trustee for the Beneficiaries all the Company's right, title and interest in and to all rights of the Company under or in the respect of the Contracts (excluding the Excluded Contracts);
- (c) **Floating Charge**

charged in favour of the Security Trustee as trustee for the Beneficiaries with the payment and the discharge of the Secured Obligations the way of first floating charge the whole of the Company's undertaking and assets, at the time the Debenture was entered into and thereafter, other than any assets effectively charged to the Security Trustee by way of fixed charge pursuant to the provisions of Clause 3.1 (a) of the Debenture or effectively assigned (whether in law or in equity) to the Security Trustee pursuant to the provisions of Clause 3.1 (b) or (c) of the Debenture or otherwise subject to an effective fixed security in favour of the Security Trustee.

## 1.2 Exceptions to the Fixed Security

The security created would not extend to:

- (a) any asset situated outside of the United Kingdom to the extent that and for so long as any such security created pursuant thereto would be unlawful under the laws of the jurisdiction in which such asset is situated; and
- (b) the Excluded Contracts.

**2. Further Assurance**

The Debenture contains covenants for further assurance.

**3. Negative Pledge**

The Debenture contains a negative pledge.

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## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 03573271

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 7th AUGUST 1998 AND CREATED BY INHOCO 788 LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE FUJI BANK, LIMITED AS SECURITY TRUSTEE FOR THE BENEFICIARIES (WHETHER FOR ITS OWN ACCOUNT OR AS TRUSTEE FOR THE BENEFICIARIES, AS THEREIN DEFINED)) OR TO ANY OF THE OTHER BENEFICIARIES UNDER OR PURSUANT TO THE FINANCE DOCUMENTS (AS THEREIN DEFINED) INCLUDING THE DEBENTURE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 25th AUGUST 1998.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 27th AUGUST 1998.

*W. Grandon*  
W. GRANDON

for the Registrar of Companies



C O M P A N I E S H O U S E