

388550/13

In accordance with  
Sections 859A and  
859J of the Companies  
Act 2006

# MR01

## Particulars of a charge

 IRIS Laserform

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

You can use the WebFiling  
Please go to [www.companies.gov.uk](http://www.companies.gov.uk)

TUESDAY




☒ **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 an instrument. Use form MR08

\*L28BXG3E\*  
LD2 14/05/2013 #96  
COMPANIES HOUSE  
LD2 03/05/2013 #119  
COMPANIES HOUSE

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

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

### 1 Company details

Company number 0 6 3 7 6 7 4 4

Company name in full Momentive Performance Materials Limited ✓  
(the "Chargor")

2 For official use

→ **Filing 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 d2 d4 m0 m4 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 JPMorgan Chase Bank, N A ✓

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

MR01

Particulars of a 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

The debenture which is being registered contains charges expressed to be fixed charges over all of the Chargor's title, interest and other rights from time to time in any land, chattels, and intellectual property. Although no particular land, aircraft, ships, or intellectual property is specified, these fixed charges would include any land, aircraft, ships, or intellectual property registered (or required to be registered) in the UK in which the Chargor has rights from time to time.

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

MR01

Particulars of a charge

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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

Mayer Brown International Ltd

X

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

MR01

Particulars of a charge



**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

Lucy Walters

Company name

Mayer Brown International LLP

Address

201 Bishopsgate

Post town

London

County/Region

Postcode

E C 2 M 3 A F

Country

UK

DX

DX 556 London and City

Telephone

+44 20 3130 3000



**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](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto: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](http://www.companieshouse.gov.uk)



**FILE COPY**

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

Company number: 6376744

Charge code: 0637 6744 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th April 2013 and created by MOMENTIVE PERFORMANCE MATERIALS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th May 2013

Given at Companies House, Cardiff on 20th May 2013



Companies House

A handwritten signature, likely of the Registrar of Companies, written in black ink.



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated 24 April 2013

- (1) **MOMENTIVE PERFORMANCE  
MATERIALS GMBH and MOMENTIVE  
PERFORMANCE MATERIALS LIMITED** as  
Chargors
- and
- (2) **JPMORGAN CHASE BANK, N.A.** as Security  
Trustee

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DEBENTURE

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I certify that, save for material redacted pursuant to s 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Signed   
**Mayer Brown International LLP**

Date 14/5/2013

**MAYER • BROWN**

LONDON

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## **Schedules**

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- 2 Properties
- 3 Notice of Assignment of Insurance
- 4 Notice of Charge of Collection Account
- 5 Notice of Charge of Payment Account
- 6 Notice of [Assignment] [Charge] over Accounts
- 7 Specified Investments
- 8 Location of Inventory



THIS DEBENTURE is dated **24** April 2013 and made between

- (1) **MOMENTIVE PERFORMANCE MATERIALS GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*), existing under the laws of Germany having its registered seat at Chemiepark Leverkusen, Gebäude V 7, 51368 Leverkusen, Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Köln under registration number HRB 59616 ("MPMG") and **MOMENTIVE PERFORMANCE MATERIALS LIMITED**, a company incorporated in England and Wales (registered number 06376744) whose registered office is at 5 Cranfield Road, Lostock Industrial Estate, Lostock, Bolton, BL6 4QD ("MPML") (each a "Chargor" and both "Chargors"), and
- (2) **JPMORGAN CHASE BANK, N.A.**, as security trustee for the Secured Parties (the "Security Trustee")

**BACKGROUND:**

- (A) By an asset-based revolving credit agreement dated on or around the date of this Debenture (the "**Credit Agreement**") and made between, amongst others, Momentive Performance Materials Inc, Momentive Performance Materials GmbH and JPMorgan Chase Bank, N A in various capacities including as Lender and Administrative Agent, the Lenders have agreed to provide revolving credit facilities to the Borrowers on the terms of the Credit Agreement
- (B) The provision of this Debenture is a condition precedent to the obligations of the Lenders under the Credit Agreement This is a "Foreign Collateral Agreement" as defined in the Credit Agreement
- (C) The Security Trustee holds the benefit of this Debenture, including the security hereby created and other rights granted in it to the Security Trustee or any Secured Party, on trust for the Secured Parties on the terms set out in the Credit Agreement and Clause 25 (*Security Trustee provisions*).
- (D) This document is the deed of each Chargor, even if it has not been duly executed by the Security Trustee or has been executed by the Security Trustee but not as a deed

**THIS DEED WITNESSES that:**

**SECTION 1  
INTERPRETATION**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Terms defined in the Credit Agreement**

Terms defined in the Credit Agreement but not in this Debenture shall have the same meanings in this Debenture (including in the Recitals) as in the Credit Agreement

**1.2 Definitions**

In addition, in this Debenture

**"ABL Intercreditor Agreement"** means an intercreditor agreement dated on or around the date of this Debenture entered into between, amongst others, Momenive Performance Materials Inc , and JPMorgan Chase Bank, N A

**"Account Control Agreement"** means any agreement or other documentation entered into between the Security Trustee, either Chargor and the relevant account holding bank (at such bank's or the Chargor's request), necessary or desirable to perfect the Liens of the Security Trustee and effect control over bank accounts of either Chargor (whether Collections Accounts, Payment Accounts or otherwise) in accordance with the provisions of this Debenture and the Credit Agreement

**"Account Debtor"** means any person who is obligated in relation to an Account

**"Accounts"** means, in relation to any Chargor, all book and other debts, both present and future, due or owing or which may become due or owing to either Chargor (including the proceeds thereof) and the benefit of all related rights, documents and remedies (including under negotiable or non-negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation of proprietary rights, rights of tracing and liens) and all payments and proceeds representing or made in respect of the same

**"Administrator"** means any administrator appointed under this Debenture to manage the affairs, business and assets of either Chargor

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration

**"Capital Impairment"** has the meaning given to it in Clause 37 1 (*Limitation*)

**"Collection Accounts"** means the bank accounts listed in Schedule 1 (*Collection and Payment Accounts*) and any other deposit account, securities account or other bank account used for the collection of proceeds of Accounts of any Chargor

**"Designated Secured Cash Management Agreement"** means a Secured Cash Management Agreement that is designated by Intermediate Holdings (in a form of a certificate executed by a Responsible Officer of Intermediate Holdings and delivered to the Administrative Agent) to be a "Designated Secured Cash Management Agreement" under the Credit Agreement and under the other Loan Documents

**"Designated Secured Hedge Agreement"** means a Secured Hedge Agreement that is designated by Intermediate Holdings (in a form of a certificate executed by a Responsible Officer of Intermediate Holdings and delivered to the Administrative Agent) to be a "Designated Secured Hedge Agreement" under the Credit Agreement and under the other Loan Documents

**"Discharge Date"** has the meaning given to it in Clause 20 1 (*Continuing security*)

**"Equipment"** means, in respect of each Chargor, all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles, and other fixed assets owned by such Chargor and used or held for sale by such Chargor in the ordinary course of its business, whether now owned or hereafter acquired by either Chargor and

wherever located, and all parts, accessories and special tools and all increases and accessions thereto and substitutions and replacements therefore

**"IA"** means the Insolvency Act 1986

**"Insolvency"** of a person includes the dissolution, bankruptcy, insolvency, winding-up, liquidation, administration, examination, amalgamation, reconstruction, reorganisation, arrangement, adjustment, administrative or other receivership or dissolution of that person, the official management of all of its revenues or other assets or the seeking of protection or relief of debtors and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction

**"Instrument"** means any document (which term includes any form of writing) under which any obligation is evidenced or undertaken or any Lien (or right in any Lien) is granted or perfected or purported to be granted or perfected

**"Insurance"** means any policy or contract of insurance and including, for the avoidance of doubt, any renewal of or replacement for any policy or contract of insurance and in relation to a Chargor **"its Insurances"** means all Insurances in which it has any rights (including as loss payee or additional insured) but excluding any contract of insurance which is a third party liability contract of insurance

**"Intellectual Property"** means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world and in relation to a Chargor, **"its Intellectual Property"** means all Intellectual Property in which it has any rights

**"Inventory"** means with respect to each Chargor, all of its now owned and hereafter acquired inventory, goods and merchandise, wherever located, in each case to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-progress, finished goods (including embedded software), other materials, and supplies of any kind, nature, or description which are used or consumed in such person's business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise, and other property, and all documents of title or other documents representing them

**"Investment"** means any share, stock, debenture, bond, unit or other security or investment (in each case together with any associated dividends, interests and other assets) and in relation to a Chargor, **"its Investments"** means all Investments (including those listed in Schedule 7 (*Specified Investments*)) in which it has any rights and all its rights against any nominee or other trustee, fiduciary, custodian or clearing system with respect to any Investments

**"Lease"** means any lease, tenancy, licence, sub-lease, sub-licence or other occupational right

**"Loan Documents"** has the meaning given to it in the Credit Agreement and includes the Credit Agreement and this Debenture

**"Losses"** means losses (including loss of profit), claims, demands, actions, proceedings, damages and other payments, costs, expenses and other liabilities of any kind

**"LPA"** means the Law of Property Act 1925

**"Mortgaged Properties"** has the meaning given to it in Clause 3 1(a) (*Land*), **"Mortgaged Property"** means any of them and any reference to one or more of the Mortgaged Properties includes all or any part of it or each of them

**"Notice and Acknowledgement"** means individually and collectively, each Notice of Assignment and Notice of Charge, together with their respective acknowledgements

**"Notice of Assignment"** means a notice of assignment substantially in the form set out in Schedule 6 (*Notice of [Assignment][Charge] over Accounts*), or Schedule 3 (*Notice of Assignment of Insurance*), as appropriate, or in such other form as may be specified by the Security Trustee

**"Notice of Charge of Collection Account"** means a notice of charge substantially in the form set out in Schedule 4 (*Notice of Charge of Collection Account*) or in such other form as may be reasonably specified by the Security Trustee

**"Notice of Charge of Payment Account"** means a notice of charge substantially in the form set out in Schedule 5 (*Notice of Charge of Payment Account*) or in such other form as may be reasonably specified by the Security Trustee

**"Notice of Charge"** means a Notice of Charge of Collection Account or a Notice of Charge of Payment Account (or, as the case may be, an Account Control Agreement)

**"Party"** means a party to this Debenture

**"Payment Account"** means the accounts used by either Chargor to operate its business and details of which are set out in Schedule 1, Part 2 (*Collection and Payment Accounts*) and any other account opened and maintained by each Chargor after the date of this Debenture which has been designated as such by the Security Trustee and the relevant Chargor

**"Planning Acts"** means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991, together with all other statutes from time to time governing or controlling the use or development of land

**"Properties"** means the properties brief details of which are set out in Schedule 2 (*Properties*), **"Property"** means any of them and any reference to one or more of the Properties includes all or any part of it or each of them

**"Receiver"** means any receiver, receiver and manager or administrative receiver appointed under this Debenture by the Security Trustee over all or any of the Secured Assets whether solely, jointly, severally or jointly and severally with any other person and includes any substitute for any of them appointed from time to time

**"Secured Assets"** means the Mortgaged Properties, each Chargor's Investments and the other assets from time to time the subject of this Security, **"Secured Asset"** means any of them and any reference to one or more of the Secured Assets includes all or any part of it or each of them

**"Secured Obligations"** means all Obligations from time to time due or owing, and all obligations and other actual or contingent liabilities from time to time incurred, by any Foreign Loan Party to any Secured Party or any Receiver or delegate of a Receiver but excluding (i) any money, obligation or liability which would cause the covenant set out in Clause 2.1 (*Covenant to pay*) or the security which would otherwise be constituted by this Debenture to be unlawful or prohibited by any applicable law or regulation, and (ii) any amounts payable (under the Guarantee Agreement or otherwise) on account of the obligations of a Domestic Loan Party.

**"Secured Parties"** has the meaning given to it in the Credit Agreement and also includes any Receiver or delegate of a Receiver

**"Security Documents"** means this Deed and any other document guaranteeing or creating security for or supporting the obligations of either Chargor or any other person to the Security Trustee or any other Secured Party in connection with the Loan Documents

**"Lien"** means a mortgage, charge, pledge, lien or other Lien securing any obligation of any person or any other agreement or arrangement having a similar effect

**"Warrants"** means all warrants or other documents of title relating to Inventory held in depositaries, warehouses or other storage locations and charged pursuant to Clause 3.1(a)

### 1.3 Construction

(a) In this Debenture, any reference to

- (i) **"assets"** includes present and future properties, revenues, rights and other assets of every description (and any reference to a particular type or category of assets includes any present or future assets of that type or category),
- (ii) the **"Chargors"** includes a reference to any one of them as well as a reference to both of them,
- (iii) **"this Debenture"** includes the Recitals and Schedules which form part of this Debenture for all purposes,
- (iv) a **"disposal"** includes any lease, licence, transfer, sale or other disposal of any kind (with related words being construed accordingly),

- (v) any **document, Instrument, or other Loan Document** is to that document, Instrument or other Loan Document as supplemented, otherwise amended, replaced or novated from time to time (however fundamental that amendment, novation or replacement may be, even if it involves increased, new, additional and/or replacement facilities or an increase in any other amount or rate),
- (vi) the masculine, feminine or neuter **gender** respectively includes the other genders and the **singular** includes the plural (and vice versa),
- (vii) a "**guarantee**" means
  - (A) any guarantee, letter of credit, bond, indemnity, third party security or other legally binding assurance against loss; or
  - (B) any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person, to make an investment in or loan to any person or to purchase assets from any person where, in each case, that obligation is assumed in order to maintain or assist the ability of that person to meet its indebtedness,
- (viii) "**including**" means "including without limitation" (with related words being construed accordingly), "**in particular**" means "in particular but without limitation" and other **general words** shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of assets, matters or things,
- (ix) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent,
- (x) a "**person**" includes any individual, firm, company or other corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of them and any reference to a **Party** or other **particular person** includes its successors in title, permitted assignees and permitted transferees in accordance with their respective interests,
- (xi) a **provision of law** is to that provision as amended, re-enacted or replaced from time to time and includes any subordinate legislation in force under it from time to time,
- (xii) a "**Recital**" is to a statement made under the heading "Background" above, any reference to a "**Clause**" or to a "**Schedule**" is to a clause of or a schedule to this Debenture (as the case may be),
- (xiii) "**regulation**" includes any regulation, rule, official directive, notice, request, code of practice, guideline, demand or decision (in each case whether or not having the force of law but, if not having the force of law, compliance with which is customary) of any governmental,

intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation,

(xiv) a "**right**" includes any title, estate, interest, claim, remedy, power, authority, discretion or other right of any kind, both present and future (and any reference to rights in a particular asset or type or category of assets includes any rights in the proceeds of any disposal of that asset or any assets within that type or category),

(xv) "**tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same), and

(xvi) "**this Security**" means the Liens constituted by or pursuant to this Debenture

(b) The index and Clause and Schedule headings are for ease of reference only

(c) If there is any inconsistency between the terms of this Debenture and those of the Credit Agreement the terms of the Credit Agreement shall prevail

#### 1 4 **Third party rights**

(a) A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Debenture. There is an exception to this in Clause 24 8(b) (*Exclusion of liability*)

(b) Notwithstanding Clause 24 8(b) (*Exclusion of liability*), no consent of any person who is not a Party is required to rescind or vary this Debenture at any time

#### 1 5 **Credit Agreement**

The Parties acknowledge that each Chargor is fully aware of the terms and conditions of the Credit Agreement

#### 1 6 **ABL Intercreditor Agreement**

The terms of this Debenture are subject to the terms of the ABL Intercreditor Agreement

**SECTION 2**  
**COVENANT TO PAY; GRANTING AND PERFECTION OF SECURITY**

**2 PAYMENT OF THE SECURED OBLIGATIONS**

**2 1 Covenant to pay**

The Chargors covenant with the Security Trustee that they shall pay and discharge, or procure the payment or discharge of, each of the Secured Obligations at the time and in the manner provided in the relevant Instrument for their payment or discharge by the relevant Loan Party

**2 2 Interest**

If the Chargors fail to pay or procure the payment of any amount payable by them under Clause 2 1 on its due date, interest shall accrue on a daily basis on the overdue amount from the due date up to the date of actual payment (both before and after judgment), at the rate and on the terms from time to time applicable under the relevant Instrument evidencing the relevant Secured Obligations (or, in the absence of an applicable rate and applicable terms, to be calculated and paid under the terms of the Credit Agreement at the relevant rate referred to in Section 2 13(e) of the Credit Agreement) and shall be payable on demand

**2 3 Further advances**

This Debenture is made to secure any further advances or other facilities made available by any of the Secured Parties constituting Secured Obligations, but it does not create any obligation on any of the Secured Parties to make any further advances or other facilities available

**3 SECURITY**

**3 1 Fixed charges**

As security for the payment and discharge of the Secured Obligations, each Chargor with full title guarantee charges to the Security Trustee by way of fixed charge (which so far as it relates to land in England and Wales vested in either Chargor as at the date of this Debenture will be a charge by way of first legal mortgage and so far as it relates to other assets shall take effect as an equitable mortgage)

- (a) **Land:** all of its rights as at the date of this Debenture in the Properties and all of its other rights in any land (together the "**Mortgaged Properties**") in each case together with all of its rights in all buildings, structures, erections, fixtures and fittings (including trade fixtures and fittings) from time to time on any of the Mortgaged Properties and any proceeds of disposal of any of the Mortgaged Properties,
- (b) **Equipment:** all of its rights in any plant, machinery, vehicles, Equipment and other chattels (but excluding its stock in trade or work-in-progress),
- (c) **Goodwill:** any goodwill and uncalled capital from time to time and all of its rights to future calls in respect of capital,



- (d) **Inventory:** all of its rights in any Inventory located in England and Wales,
- (e) **Accounts:** all of its rights in respect of the Accounts (but only if and to the extent the rights in question have not been effectively assigned pursuant to Clause 3 2 (*Assignments*)),
- (f) **Collection Accounts:** all of its rights in any credit balances on any Collection Account located in England and Wales and the indebtedness represented by it, and
- (g) **Payment Accounts:** all of its rights in any credit balances on any Payment Account located in England and Wales and the indebtedness represented by it,
- (h) **Shares and Investments:** all of its rights in its Investments,
- (i) **Intellectual property rights:** all of its rights in its Intellectual Property,
- (j) **Licences:** all licences, consents and other Authorisations held in connection with its business or the use of any Secured Assets and all of its rights in connection with them, and
- (k) **Other documents:** all of its rights in any agreements, reports, books, records and other documents from time to time relating to all or any part of the Secured Assets, other than those assigned by Clause 3 2,

other than, in each case, any Excluded Property

### 3 2 **Assignments**

As security for the payment and discharge of the Secured Obligations, each Chargor with full title guarantee assigns absolutely to the Security Trustee

- (a) **Accounts:** all of its rights in its Accounts, and
- (b) **Insurance:** all of its rights in its Insurances, including those relating to the Mortgaged Properties, and in any proceeds of its Insurances

### 3 3 **Floating charge**

As security for the payment and discharge of the Secured Obligations, each Chargor with full title guarantee charges to the Security Trustee by way of floating charge the whole of its undertaking and other assets (other than Excluded Property) other than assets validly and effectively charged or assigned (whether at law or in equity) from time to time pursuant to Clause 3 1 (*Fixed charges*) or Clause 3 2 (*Assignments*) Schedule B1, Paragraph 14 IA shall apply to the floating charge contained in this Debenture

## **4 CRYSTALLISATION OF FLOATING CHARGE**

### **4 1 Crystallisation by notice**

The Security Trustee may at any time by notice in writing to a Chargor convert the floating charge created by that Chargor in Clause 3 3 (*Floating charge*) into a fixed charge with immediate effect as regards any Secured Asset specified in the notice if

- (a) an Event of Default has occurred and is continuing,
- (b) the Security Trustee reasonably considers that any Secured Asset may be in danger of being seized or sold pursuant to any form of legal process or otherwise in jeopardy, or
- (c) the Security Trustee reasonably considers that it is desirable to protect the priority of this Security.

### **4 2 Automatic crystallisation**

The floating charge created by a Chargor in Clause 3 3 (*Floating charge*) shall automatically (without notice to that Chargor) be converted into a fixed charge with immediate effect as regards all assets of the relevant Chargor subject to the floating charge if

- (a) that Chargor creates a Lien other than a Permitted Lien over any Secured Asset or attempts to do so or any Secured Asset is disposed of contrary to Clause 7.2 (*No disposals*),
- (b) any person levies or attempts to levy any distress, execution, sequestration or other process against any Secured Asset of the relevant Chargor, or
- (c) the Security Trustee receives notice of a proposal or intention to wind up, or appoint an administrator of, that Chargor or if that Chargor is wound up or has an administrator appointed

Nothing in this Clause 4 2 shall affect the crystallisation of the floating charge created by either Chargor under applicable law and regulation

## **5 PERFECTION OF SECURITY AND FURTHER ASSURANCE**

### **5 1 Notice of Assignment**

- (a) Each Chargor shall
  - (i) promptly after the date of this Debenture deliver (with a copy to the Security Trustee) a Notice of Assignment, duly completed, to any insurer liable on any Insurance of any Chargor specified by the Security Trustee,
  - (ii) use reasonable endeavours to procure that each addressee of a Notice of Assignment under Clause 5 1(a) above acknowledges that Notice of Assignment in the form attached to that Notice of Assignment (or in

such other form as the Security Trustee (acting reasonably) may approve), and

- (b) Each Chargor shall promptly upon a request from the Security Trustee after the occurrence of a Default which is continuing (and without prejudice to the generality of Clause 4 (*Crystallisation of floating charge*)), deliver (with a copy to the Security Trustee) a Notice of Assignment, duly completed to each Account Debtor and take such further steps as are necessary to perfect the assignment or charge of its Accounts assigned or charged pursuant to Clause 3.2 (*Assignments*) or, as applicable, Clause 3.1 (*Fixed charges*) in any applicable jurisdiction (including, without limitation, the jurisdiction of the law governing the contract generating the Account and the law of the jurisdiction of each Account Debtor)

## 5.2 Notice of Charge

- (a) With respect to its bank accounts located in England or Wales, each Chargor shall
  - (i) on the date of this Debenture or, after the date of this Debenture, promptly upon the creation of a new Collection Account or Payment Account deliver (with a copy to the Security Trustee) a Notice of Charge of Collection Account or, in the case of a Payment Account or other bank account, a Notice of Charge of Payment Account, as applicable, duly completed to the bank with which the relevant Collection Account, Payment Account or other bank account is opened or maintained; and
  - (ii) in respect of its Collection Accounts, procure that each addressee of a Notice of Charge acknowledges that Notice of Charge on the date of this Debenture or (as the case may be) on the date of creation of a new Collection Account, substantially in the form attached to that Notice of Charge (or in such other form as the Security Trustee may reasonably approve), or
  - (iii) in respect of any bank accounts that are not Collection Accounts, use reasonable endeavours to procure that each addressee of a Notice of Charge acknowledges that Notice of Charge substantially in the form attached to that Notice of Charge (or in such other form as the Security Trustee may reasonably approve)
- (b) As an alternative to Clause 5.1(a), the Security Trustee may, at its request or at the request of either Chargor or the applicable account bank, enter into Account Control Agreements with the banks at which the relevant bank accounts in England or Wales are opened or maintained, such Account Control Agreements to be in form and substance reasonably satisfactory to the Security Trustee (and, for the avoidance of doubt, if such Account Control Agreement is entered into with respect to a bank account, the relevant Chargor shall not be obliged to comply with Clause 5.1(a) in respect of that bank account)

- (c) Following the occurrence of an Availability Trigger Event (and whilst the same is continuing), promptly upon a request from the Security Trustee, the relevant Chargor shall deliver (with a copy to the Security Trustee) a notice of charge (in form and substance satisfactory to the Security Trustee acting reasonably), duly completed to any depositary owner, warehouse owner or other person who owns or controls a location in England or Wales at which the relevant Chargor's Inventory is stored or located

### **5.3 Further assurance**

Each Chargor shall at the reasonable request of the Security Trustee and at its own expense promptly execute (in such form as the Security Trustee may reasonably require) any Instruments or other documents and otherwise do any acts and things which the Security Trustee may reasonably require to preserve, perfect or protect the security created (or intended to be created) by this Debenture or the priority of it or whilst an Event of Default is continuing to facilitate the realisation or enforcement of it or to exercise any of the rights of the Security Trustee, any other Secured Party or any Receiver in relation to the same.

### **5.4 Non-Assignable Rights**

Each Chargor undertakes that to the extent that any right, title, interest or benefit in or in respect of any asset described in Clause 3.1 (*Fixed Charges*) or Clause 3.2 (*Assignments*) cannot be or is not effectively charged pursuant to Clause 3.1 (*Fixed Charges*) or assigned pursuant to Clause 3.2 (*Assignments*) for whatever reason, it shall

- (a) promptly upon becoming aware of the same notify the Security Trustee of the same and the reasons therefor,
- (b) hold the benefit of the same on trust for the Security Trustee as security for the payment, discharge and performance, when due, of the Secured Obligations; and
- (c) use reasonable endeavours to take such steps as the Security Trustee may require to remove such impediment to the creation of a charge or to an assignment

**SECTION 3**  
**ASSET REPRESENTATIONS, COVENANTS AND WARRANTIES**

**6 REPRESENTATIONS**

Each Chargor (unless otherwise stated) represents and warrants to the Security Trustee, the Administrative Agent and the Lenders on the date of this Debenture and on the occasion of each Borrowing under the Credit Agreement that

- (a) save for Permitted Liens, it is the sole legal and beneficial owner of the assets over which it purports to grant security,
- (b) it has good and valid rights in, or the power to transfer, the Secured Assets and title to the Secured Assets with respect to which it has purported to grant a Lien under this Debenture, free and clear of all Liens except for Permitted Liens, and has full power and authority to grant to the Security Trustee this Security,
- (c) under the law of its jurisdiction of incorporation, it is not necessary that this Debenture be filed, recorded or enrolled with any court or other authority except for, the filing of particulars at Companies House in England and Wales under Section 859A of the Companies Act 2006 (with respect to MPML only), the registration of particulars of this Debenture at HM Land Registry in respect of any Mortgaged Property and the registration of this Debenture at the Trade Marks Registry at the Patent Office in England and Wales in respect of any registered Intellectual Property,
- (d) with regards to MPMG's Investments in MPML
  - (i) there are no moneys or liabilities outstanding or payable in respect of them or any of them,
  - (ii) they constitute the whole of the issued share capital of MPML, and
  - (iii) they are fully transferable to the Security Trustee or such other person as the Security Trustee shall direct in accordance with the terms of this Debenture without restriction
- (e) with respect to all of its Inventory in England and Wales
  - (i) it is located at one of the relevant Chargor's locations set out in Schedule 8 (*Location of Inventory*) or at locations permitted after the date hereof pursuant to Clause 14.4 (*Location*), other than Inventory in transit,
  - (ii) the relevant Chargor has good and merchantable title to all of such Inventory, and such Inventory is not subject to any Lien except for Permitted Liens,
  - (iii) it is of good and merchantable quality free from any defects not reflected in the value thereof as shown on the most recent Borrowing Base Certificate,

- (iv) it is not subject to any licensing, patent, royalty, trademark, trade name or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the payment of any monies to any third party upon such sale or other disposition, and
- (v) the completion of manufacture, sale or other disposition of such Inventory by the Security Trustee following the occurrence of an Event of Default which is continuing shall not require the consent of any person and shall not constitute a breach or default under any contract or agreement to which the relevant Chargor is a party or to which such property is subject

## **7 NEGATIVE PLEDGE AND DISPOSALS**

### **7 1 Negative pledge**

Each Chargor undertakes that it will not, at any time prior to the Discharge Date, create, incur, assume or permit to exist any Lien on any property or assets (including shares or other securities of any person, including any Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except for Permitted Liens

### **7 2 No disposals**

Each Chargor undertakes that it will not, at any time prior to the Discharge Date, sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its Secured Assets except as Section 6 05 (*Mergers, Amalgamations, Consolidations, Sales of Assets and Acquisitions*) of the Credit Agreement does not prohibit

## **8 OTHER COVENANTS OF GENERAL APPLICATION**

### **8 1 Information and access**

Each Chargor shall comply in all respects with the obligations set out in Section 5.04(g) and Section 5 07 (*Maintaining Records, Access to Properties and Inspections*) of the Credit Agreement as if such obligations were set out in full in this Debenture

### **8 2 Management of Secured Assets**

Each Chargor shall manage its Secured Assets in a proper and efficient manner and in particular shall

- (a) keep its Secured Assets in good and substantial repair and working order,
- (b) not without the prior written consent of the Security Trustee make, permit or allow any alterations or additions of a materially prejudicial nature to any of its Secured Assets or carry out any works of demolition on them, and
- (c) not do, permit or allow to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the security held by the Security

Trustee or the value of any of that Chargor's Secured Assets and shall immediately inform the Security Trustee of anything which occurs which would reasonably be expected to have that effect

### **8 3 Maintenance of insurance**

Each Chargor shall, at all times until the Discharge Date comply with the obligations set out in Section 5 02 (*Insurance*) of the Credit Agreement as if such obligations were set out in full in this Debenture

### **8 4 Covenants for title**

The obligations of each Chargor under this Debenture shall be in addition to the covenants for title deemed to be included in this Debenture by virtue of Part 1 Law of Property (Miscellaneous Provisions) Act 1994

## **9 MORTGAGED PROPERTIES**

### **9 1 Registration at Land Registry**

The Chargors shall

- (a) do all things reasonably requested by the Security Trustee to facilitate the registration of this Debenture against any Land Registry title comprised in the Mortgaged Properties. For that purpose, the Chargors shall
  - (i) apply to the Chief Land Registrar for a restriction to be entered on each title to the Mortgaged Properties in the following terms "No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Debenture dated [●], in favour of JPMorgan Chase Bank, N A referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer", and
  - (ii) if the Security Trustee so requests, certify that the security over the Mortgaged Properties created by this Debenture does not contravene any of the provisions of its constitutional documents,
- (b) not permit any other person to be registered at Land Registry as proprietor of any of the Mortgaged Properties (or of any interest in any of the Mortgaged Properties), and
- (c) not create or permit to arise any interest which falls within any of the paragraphs of Schedule 3 Land Registration Act 2002 or any interest preserved by the transitional provisions of Schedule 12 Land Registration Act 2002 to the extent and for so long as any interest of the Security Trustee is so preserved in or over any of the Mortgaged Properties

## **9 2 Delivery of Mortgaged Property title documents**

- (a) Each Chargor shall, on the date of this Debenture and from time to time, deliver (or procure that there are delivered) to the Security Trustee (or a nominee specified by the Security Trustee acting on its behalf) all title documents (including all local land charges, Land Registry search certificates and planning and other statutory consents) relating to the Mortgaged Properties. The Security Trustee shall be entitled until the Discharge Date to hold or retain (or have its nominee hold or retain) them
- (b) On completion of the registration of this Debenture against any Land Registry title comprised in the Mortgaged Properties, the Chargors shall supply the Security Trustee with a copy of the title information document for that title

## **9 3 Future acquisitions**

Each Chargor shall, at all times until the Discharge Date, notify the Security Trustee immediately of any proposal, contract, conveyance, transfer or other disposition for or effecting the acquisition by it or any nominee on its behalf of any land

## **9 4 Development**

Each Chargor shall, at all times until the Discharge Date

- (a) not carry out or permit to be carried out on any of the Mortgaged Properties any development (within the meaning of that expression in the Planning Acts and being development for which the permission of the local planning authority is required) nor sever or unfix or remove any of the fixtures from any of the Mortgaged Properties nor remove any of the plant and machinery (other than stock-in-trade or work-in-progress) on any Mortgaged Property (except for the purpose and in the course of effecting necessary repairs to that asset or of replacing it with a new or improved model or substitute), and
- (b) not make (or permit others to make) any application for planning permission in respect of any of the Mortgaged Properties without the prior written consent of the Security Trustee

## **9 5 Leases comprised in the Secured Assets**

No Chargor shall without the prior written consent of the Security Trustee

- (a) surrender or determine or agree to the determination, surrender or termination of any Lease forming part of the Secured Assets, or
- (b) agree to any amendment of, or to any waiver of rights under, any Lease forming part of the Secured Assets which would materially prejudice this Security

## **9.6 Powers of leasing of the Chargors**

No grant, agreement to grant or acceptance of a surrender of a Lease forming part of the Secured Assets by a Chargor prior to the Discharge Date shall have effect or force



(by virtue of ss99 and 100 Law of Property Act 1925 or otherwise) without the consent of the Security Trustee

#### **9.7 Local authority proposals**

- (a) The Chargors shall
  - (i) give to the Security Trustee a copy of any notice or order (or any proposal for a notice or order) given, issued or made by any local or other authority relating to any of the Secured Assets,
  - (ii) take all necessary steps to comply with that notice, order or proposal, and
  - (iii) make or join in making any representations which the Security Trustee (acting reasonably) requests in respect of the notice, order or proposal
- (b) Any compensation received as a result of a notice, order or proposal referred to in Clause 9.7(a), pursuant to s25 Law of Property Act 1969 and/or the Landlord and Tenant Act 1954 or otherwise, shall after an Event of Default which is continuing be held on trust for, and promptly paid to, the Security Trustee. After an Event of Default which is continuing the Security Trustee shall apply the compensation it receives as if it constituted proceeds of an enforcement of this Debenture

#### **9.8 Subsequent incumbrancer**

For the purposes of ss99 and 100 LPA, "mortgagor" shall include any incumbrancer (as defined in the LPA) deriving title from a Chargor and s99(18) and s100(12) LPA shall not apply.

### **10 ACCOUNTS AND RELATED MATTERS**

Neither Chargor shall release, set off, exchange, compound, grant time or indulgence, subordinate its rights in respect of any of its Accounts to the rights of any other person in relation to debts owed to such person or otherwise deal over, of or with its Accounts (nor, in each such case, purport to do so) otherwise than by getting in and realising them in the ordinary course of its business (and for this purpose the realisation of the Accounts by means of block discounting, factoring or the like shall not be regarded as dealing in the ordinary course of its business) and, in any event, not sell, assign, factor or discount its Accounts in favour of any person, nor purport to do so

### **11 BANK ACCOUNTS**

#### **11.1 Dealing with bank accounts other than Collection Accounts**

Prior to the enforcement of this security, each Chargor may make withdrawals from and continue to operate its bank accounts that are not Collection Accounts, in each case to the extent that it is permitted to do so under the terms of the Credit Agreement

## **11.2 Signing rights on bank accounts**

The Chargors shall ensure that the Security Trustee shall have sole signing rights on the Collection Accounts located in England or Wales in accordance with the terms of Clause 11.3 and the Notice of Charge of Collection Account or Account Control Agreement (as applicable)

## **11.3 Payment Accounts**

Unless an Availability Trigger Event has occurred and is continuing, the Collateral Agent may not deliver to an account bank any instructions relating to a Payment Account or exercise or purport to exercise any rights in relation thereto

## **11.4 Collection Accounts**

- (a) Each Collection Account located in England or Wales shall be governed by a mandate and/or other agreement in form and substance reasonably satisfactory to the Security Trustee, in each case conferring sole control over such Collection Account on the Security Trustee (and, for the avoidance of doubt, an Account Control Agreement shall be deemed to satisfy this provision)
- (b) Each Chargor agrees that the only way in which monies may be withdrawn (or swept) from any Collection Account located in England or Wales is at the discretion of, and through the express authorisation by, the Security Trustee. The Security Trustee will, at its own discretion, authorise or instruct such withdrawals (including by way of a sweep) by written instruction to the relevant account bank
- (c) Following an Availability Trigger Event and whilst the same is continuing the Security Trustee may apply the monies standing to the credit of any Collection Account located in England or Wales of any Chargor in or towards prepayment of the Secured Obligations in accordance with Section 2.11(d) of the Credit Agreement.
- (d) The Security Trustee may delegate its powers of withdrawal under this Clause 11.3 to any Administrator, Receiver and/or manager

## **12 THE INVESTMENTS**

### **12.1 Delivery of Investment title documents; registration**

- (a) Each Chargor shall, on the date of this Debenture and from time to time, deliver (or procure that there are delivered) to the Security Trustee (or a nominee specified by the Security Trustee acting on its behalf) all share certificates or other documents of title to or representing its Investments, together with (in each case in form and substance satisfactory to the Security Trustee)
  - (i) if any of the Investments are not in its sole name, a declaration of trust in respect of those Investments in its favour duly executed by each person other than the relevant Chargor in whose name those Investments are registered or held,

- (ii) any instrument of transfer or assignment of such Investments specified by the Security Trustee duly executed by each person in whose name any of those Investments are registered or held (with the name of the transferee or assignee, the consideration and the date left blank), and
  - (iii) any other Instrument, other document or thing which the Security Trustee may reasonably specify to perfect its security over that Chargor's Investments, including waivers of pre-emption and other rights which may affect the exercise of any rights under, or the enforcement of, this Debenture
- (b) The Security Trustee shall be entitled until the Discharge Date to hold or retain (or have its nominee hold or retain) all items delivered pursuant to Clause 12.1(a)

## **12.2 Rights before a post-Event of Default notification**

Before the occurrence of an Event of Default and after an Event of Default unless Clause 12.3 applies

- (a) the relevant Chargor shall
  - (i) be entitled to receive and retain all dividends, interest and other monies paid in respect of such Chargor's Investments, and
  - (ii) subject to (c) below be entitled to exercise all voting and other rights attached to such Chargor's Investments, and
- (b) the Security Trustee shall
  - (i) hold all dividends, interest and other monies paid on and received by it in respect of each Chargor's Investments for the account of the relevant Chargor and will pay those dividends, interest and other monies to the relevant Chargor on request, and
  - (ii) exercise all voting and other rights attached to each Chargor's Investments (insofar as transferred to the Security Trustee or its nominee) as the relevant Chargor may (subject to (c) below) from time to time in writing direct, provided that the Security Trustee shall be under no obligation to comply with any such direction where compliance would in the Security Trustee's reasonable opinion be prejudicial to this Security or the security created by any other Security Document, and
- (c) neither Chargor shall
  - (i) exercise any rights attached to the Investments in any manner which is prejudicial to this Security or the security created by any other Security Document, and
  - (ii) without the prior written consent of the Security Trustee, permit or agree to any variation of the rights attaching to the Investments,

participate in any rights issue, elect to receive or vote in favour of receiving any dividend other than in the form of cash or participate in any resolution concerning a winding-up, liquidation or administration

#### **12 3 Rights after a post-Event of Default notification**

If at any time following the occurrence of an Event of Default which is continuing the Security Trustee gives notice to the Chargors that this Clause 12 3 applies, then from the date of that notice

- (a) this Clause 12 3 shall apply,
- (b) the Security Trustee or its nominee may at the Security Trustee's discretion, (and in the name of the relevant Chargor or otherwise) exercise all voting and other rights attached to the Investments and all rights to receive dividends, interest and other monies paid on or to be received in respect of the Investments without any further consent or authority on the part of the relevant Chargor, and
- (c) neither Chargor shall exercise any of those rights

#### **12 4 Calls and notices**

- (a) Each Chargor shall, at all times until the Discharge Date, duly and promptly pay (or ensure that these are paid) all calls, instalments or other monies which may from time to time become due in respect of any of the Investments without deduction or set-off
- (b) Each Chargor shall provide the Security Trustee with any report, accounts, circular, notice or other item sent or provided to it (or to any person on its behalf) in connection with its holding of the Investments or any of them immediately on receipt of them

#### **12 5 Issue of shares**

- (a) Each Chargor shall ensure that no shares or other equity securities in or of MPML will be issued or allotted to any person other than MPMG and no agreement, option or arrangement to make or call for such issue or allotment will be made or granted without the Security Trustee's prior written consent.
- (b) Each Chargor shall execute any document and take any other step reasonably required by the Security Trustee to ensure that any shares in MPML issued or allotted to MPMG (or any of its Affiliates) promptly become subject to this Security as Secured Assets or in the case of shares issued or allotted to an Affiliate, are charged by that Affiliate to the Security Trustee in terms acceptable to the Security Trustee

#### **12 6 Alterations of constitutional documents, purchase of shares and reduction of share capital**

- (a) Each Chargor shall ensure that it shall not, unless the prior written consent of the Security Trustee has been obtained, alter its memorandum or articles of

association in a manner which would be prejudicial to this Security or the rights and powers of the Security Trustee under this Security

- (b) MPML shall ensure that it shall not, unless the prior written consent of the Security Trustee has been obtained, purchase its own shares or reduce its share capital

## **12 7 Waivers of pre-emption rights**

Each Chargor shall ensure that all shareholders of any person whose shares or equity interests are charged pursuant to this Debenture from time to time enters into waivers of, or makes any necessary amendments to (in each case in a form and on terms reasonably satisfactory to the Security Trustee) all pre-emption rights, liens, restrictions on transfer in the Articles of Association or other constitutional documents of such person from time to time or otherwise which may in any respect vary, restrict or affect the exercise of any rights which may arise in connection with the enforcement of this security or the transfer upon the enforcement of this Security of the shares in such person to the Security Trustee or such other person as the Security Trustee may so direct

## **13 INTELLECTUAL PROPERTY**

At all times until the Discharge Date each Chargor shall comply with the obligations set out in Section 5.01(b) of the Credit Agreement as if such obligations were set out in full in this Debenture

## **14 INVENTORY**

### **14 1 Dealing with Inventory**

Prior to the enforcement of this security, each Chargor may deal with, and dispose of any interest in, its Inventory, in each case to the extent that it is permitted to do so under the terms of the Credit Agreement

### **14.2 Documents of Title**

Each Chargor shall, if required by the Security Trustee following the occurrence of an Event of Default and, whilst the same is continuing, deliver (or procure that there are delivered) to the Security Trustee (or a nominee specified by the Security Trustee acting on its behalf) all Warrants and other documents of title relating to or representing its Inventory together with any Instrument, other document or thing which the Security Trustee may reasonably specify to perfect or improve the security over the relevant Chargor's Inventory

### **14 3 Inventory count**

Each Chargor will conduct a physical count of its Inventory (other than Inventory in the physical possession of a third party as to which either Chargor has delivered to the Security Trustee such evidence of the nature, extent and condition thereof as the Security Trustee shall reasonably request and find reasonably satisfactory) at least once in each financial year, and if an Availability Trigger Event has occurred during such financial year then the Security Trustee may require either Chargor to conduct a

physical count of such Inventory no more than twice in that financial year. Each Chargor will promptly deliver to the Security Trustee the results of each physical verification which the relevant Chargor has made, or has caused any other person to make on its behalf, of its Inventory.

#### 14.4 Location

Each Chargor may maintain Inventory, other than Inventory in transit only, at the locations set out in Schedule 8 (*Location of Inventory*) unless the Security Trustee shall have received at least five Business Days' prior written notice of a change to a location or locations and the Security Trustee shall have acknowledged in writing that either (a) such change will not adversely affect the validity, perfection or priority of the Security Trustee's Lien in the Inventory or (b) any reasonable action requested by the Security Trustee in connection therewith has been completed or taken.

## SECTION 4 ENFORCEMENT OF SECURITY

### 15 ENFORCEMENT – GENERAL PROVISIONS

#### 15.1 Enforcement

On or at any time after the occurrence of an Event of Default which is continuing

- (a) this Security shall become immediately enforceable and the Security Trustee may enforce all or any of its rights under this Debenture as it thinks fit. In particular, it may without further notice exercise in relation to the Secured Assets
  - (i) the power of sale and all other powers conferred on mortgagees by the LPA (or otherwise by law) or on an administrative receiver by the IA, in either case as extended or otherwise amended by this Debenture,
  - (ii) to the extent that Clause 16 (*Right of appropriation*) applies, the power to appropriate the Secured Assets in or towards the payment and discharge of the Secured Obligations in accordance with Clause 16.2 (*Exercise of right of appropriation*), and
  - (iii) (without first appointing a Receiver) any or all of the rights which are conferred by this Debenture (whether expressly or by implication) on a Receiver

#### 15.2 LPA provisions

- (a) The Secured Obligations shall be deemed for the purposes of all powers implied by statute to have become due and payable within the meaning of s101 LPA immediately on the execution of this Debenture
- (b) s93(1) LPA (restriction on the consolidation of mortgages), s103 LPA (restricting the power of sale) and s109 LPA (restricting the power to appoint a receiver) shall not apply to this Security

#### 15.3 Protection of third parties

- (a) No purchaser, mortgagee or other person dealing with a Receiver or the Security Trustee shall be bound to enquire whether its right to exercise any of its rights has arisen or become exercisable, or be concerned as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with that Receiver or the Security Trustee
- (b) All of the protection to purchasers contained in ss104 and 107 LPA and s42(3) IA shall apply to any person purchasing from or dealing with a Receiver or the Security Trustee as if the Secured Obligations had become due and the statutory powers of sale and of appointing a Receiver in relation to the Secured Assets had arisen on the date of this Debenture

#### **15 4 Delegation**

- (a) The Security Trustee may delegate to any person or persons all or any of the rights which are exercisable by it under this Debenture. A delegation under this Clause may be made in any manner (including by power of attorney) and on any terms (including power to sub-delegate) which the Security Trustee may think fit.
- (b) A delegation under Clause 15 4(a) shall not preclude the subsequent exercise of those rights by the Security Trustee itself nor preclude the Security Trustee from making a subsequent delegation of them to another person or from revoking that delegation.
- (c) The Security Trustee shall not be liable or responsible to any Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

#### **15 5 No liability**

None of the Security Trustee, any Receiver or any Administrator shall be liable as a mortgagee in possession or otherwise to account in relation to all or any part of the Secured Assets for any loss on realisation or for any other action, default or omission for which it, he or she might be liable.

#### **15 6 Grant of Intellectual Property license**

For the purpose of enabling the Security Trustee to exercise the rights and remedies under this Clause 15 at any time that the Security Trustee is lawfully entitled to exercise such rights and remedies, each Chargor hereby

- (a) grants to the Security Trustee, for the benefit of the Security Trustee and the Secured Parties, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the relevant Chargor) to use, license or sublicense any intellectual property rights now owned or hereafter acquired by the relevant Chargor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, and
- (b) irrevocably agrees that the Security Trustee may sell any of the relevant Chargor's Inventory directly to any person including, without limitation, persons who have previously purchased the relevant Chargor's Inventory from that Chargor and in connection with any such sale or other enforcement of the Security Trustee's rights under this Debenture, may sell Inventory which bears any trademark owned by or licensed to the relevant Chargor and any Inventory that is covered by any copyright owned by or licensed to the relevant Chargor and the Security Trustee may finish any work in process and affix any trademark owned by or licensed to the relevant Chargor and sell such Inventory as provided in this Debenture.



## **16 RIGHT OF APPROPRIATION**

### **16 1 Application of right of appropriation**

This Clause 16 applies to the extent the Secured Assets constitute "financial collateral" and this Debenture constitutes a "financial collateral arrangement" (within the meaning of the Financial Collateral Arrangements (No 2) Regulations 2003)

### **16 2 Exercise of right of appropriation**

If and to the extent that this Clause 16 applies, the Security Trustee may appropriate the Secured Assets. If the Security Trustee exercises its right of appropriation then it shall for these purposes value

- (a) any relevant Collection Account, Payment Account or other bank account and the amount standing to the credit of that account, together with any accrued interest not credited to the account, at the time of the appropriation, and
- (b) any other relevant Secured Asset by reference to an independent valuation or other procedure determined by the Security Trustee, acting reasonably, at the time of the appropriation

## **17 APPOINTMENT OF RECEIVER**

### **17 1 Appointment of Receiver**

Without prejudice to any statutory or other powers of appointment of the Security Trustee under the LPA as extended by this Debenture or otherwise, at any time after this Security has become enforceable or if the relevant Chargor so requests in writing at any time the Security Trustee may without further notice to either Chargor do any of the following

- (a) appoint by deed or otherwise (acting through a duly authorised officer) any one or more persons qualified to act as a Receiver to be a Receiver of all or any part of the Secured Assets;
- (b) either at the time of appointment or any time after that appointment fix his or their remuneration (without being limited by the maximum rate specified in s109(6) LPA); and
- (c) (except as otherwise required by statute) remove any Receiver and appoint another or others in his or her place

### **17 2 Powers of Receiver**

Every Receiver shall have in relation to the Secured Assets (every reference in this Clause 17 2 to "Secured Assets" being a reference only to all or any part of the Secured Assets in respect of which that Receiver was appointed) the powers granted by the LPA to any receiver appointed under it or to any mortgagor or mortgagee in possession and (whether or not the Receiver is an administrative receiver) the powers granted by the IA to any administrative receiver, all as varied and extended by this

Debenture In addition, but without limiting the preceding sentence, every Receiver shall have power to do the following

- (a) **Collection:** enter on, take possession of, collect and get in the Secured Assets and collect and get in all income relating to the Secured Assets whether accrued before or after the date of his or her appointment and for those purposes make any demands and take any actions or other proceedings which may seem to him or her expedient,
- (b) **Compliance with Debenture:** comply with and perform all or any of the acts, matters, omissions or things undertaken to be done or omitted by the relevant Chargor under this Debenture,
- (c) **Management of business:** carry on, manage, develop, reconstruct, amalgamate or diversify the business of the relevant Chargor or any part of it in such manner as the Receiver shall in his or her discretion think fit,
- (d) **Dealing with Secured Assets:** sell or otherwise dispose of the Secured Assets, grant Leases, easements, rights or options over or in respect of them and surrender, accept the surrender or vary any Lease, agreement or arrangement relating to them This power may be exercised without the need to comply with ss99 and 100 LPA Any disposal or other dealing under this Clause 17 2(d) may be effected in the manner and on any terms which the Receiver thinks fit, for consideration consisting of cash, debentures or other obligations, shares or other valuable consideration and this consideration may be payable in a lump sum or by instalments spread over such period as the Receiver may think fit,
- (e) **Severance of assets:** sever from the premises to which they are annexed and sell separately (in accordance with Clause 17 2(d)) any plant, machinery or fixtures which constitute Secured Assets;
- (f) **Upkeep of Secured Assets:** repair, decorate, furnish, maintain, alter, improve, replace, renew or add to the Secured Assets as the Receiver shall think fit and effect, maintain, renew or increase indemnity insurance and other insurances and obtain bonds in relation to the Secured Assets,
- (g) **Dealing with third parties:** appoint or dismiss officers, employees, contractors or other agents and employ professional advisers and others on such terms (as to remuneration and otherwise) as the Receiver may think fit;
- (h) **Agreements:** perform, repudiate, terminate, amend or enter into any arrangement or compromise any contracts or agreements relating to the Secured Assets which the Receiver may consider expedient,
- (i) **Proceedings:** settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes which may arise in connection with the business of the relevant Chargor or the Secured Assets and bring, prosecute, defend, enforce, compromise, submit to and discontinue any actions, suits, arbitrations or other proceedings which may arise in connection with the Secured Assets,

- (j) **Uncalled capital:** make calls on the shareholders of the relevant Chargor in respect of any of its uncalled capital,
- (k) **Rights in connection with Secured Assets:** exercise or permit the relevant Chargor or any nominee of the relevant Chargor to exercise any rights incidental to the ownership of the Secured Assets in such manner as the Receiver may think fit,
- (l) **Subsidiaries:** form a subsidiary or subsidiaries of the relevant Chargor and transfer, lease or license to it or them or any other person the Secured Assets on such terms as the Receiver may think fit,
- (m) **Assets and rights:** purchase, lease, hire or otherwise acquire any assets or rights of any description which the Receiver shall consider necessary or desirable for the carrying on, improvement or realisation of the Secured Assets or the business of the relevant Chargor or otherwise for the benefit of the Secured Assets;
- (n) **Landlord and tenant powers:** exercise any rights conferred on a landlord or a tenant by any applicable law or regulation in relation to the Secured Assets,
- (o) **Raising money:** in the exercise of any of the rights conferred on the Receiver by this Debenture or for any other purpose to raise and borrow money either unsecured or secured and either in priority to, *pari passu* with or subsequent to this Security and generally on such terms as he or she may think fit,
- (p) **Receipts and discharges:** give valid receipts for all monies and execute all discharges, assurances and other documents which may be proper or desirable for realising the Secured Assets and redeem, discharge or compromise any Lien whether or not having priority to this Security or any part of it,
- (q) **All other acts:** execute and do all such other acts, things and documents as the Receiver may consider necessary or desirable for the realisation or preservation of the Secured Assets or incidental or conducive to any of the rights conferred on or vested in him or her under or by virtue of this Debenture or otherwise and exercise and do in relation to the Secured Assets, and at the cost of the relevant Chargor, all the rights and things which he or she would be capable of exercising or doing if he or she were the absolute beneficial owner of the same, and
- (r) **Name of Chargor:** use the name of either Chargor or his or her own name to exercise all or any of the rights conferred by this Debenture

### 17.3 Agent of the Chargors

Any Receiver appointed under this Debenture whether acting solely or jointly shall be deemed to be the agent of the relevant Chargor and to be in the same position as a receiver appointed under the LPA and the relevant Chargor shall be solely responsible for his or her acts, omissions, defaults, losses and misconduct and for his or her remuneration and the Security Trustee shall not be in any way liable or responsible either to the relevant Chargor or to any other person for any Receiver.

#### **17 4 Joint appointment**

If at any time two or more persons have been appointed as Receivers of the same Secured Assets, each one of those Receivers shall be entitled to exercise individually all of the rights conferred on Receivers under this Debenture to the exclusion of the other or others in relation to any of the Secured Assets in respect of which he or she has been appointed unless the Security Trustee shall state otherwise in the document appointing him or her

### **18 APPOINTMENT OF ADMINISTRATOR**

#### **18 1 Appointment of Administrator**

- (a) The Security Trustee may without notice appoint any one or more persons to be an administrator of either Chargor pursuant to Schedule B1, Paragraph 14 IA at any time after this Security has become enforceable
- (b) Clause 18 1(a) shall not apply to either Chargor if Schedule B1, Paragraph 14 IA does not permit an administrator of that Chargor to be appointed
- (c) Any appointment under Clause 18 1(a) shall be in writing signed by a duly authorised officer of the Security Trustee

#### **18 2 Replacement of an Administrator**

The Security Trustee may (subject to any necessary approval from the court) end the appointment of any Administrator by notice in writing signed by a duly authorised officer and appoint under Clause 18 1 a replacement for any Administrator whose appointment ends for any reason.

### **19 APPLICATION OF PROCEEDS**

#### **19 1 Order of priority**

Any monies received by the Security Trustee or any Receiver under this Debenture or under the rights conferred by this Debenture shall, after enforcement of this security and payment of any claims having priority to this Security, be applied in the following order to the extent permitted by applicable law, but without prejudice to the right of the Security Trustee to recover any shortfall from the Chargors

- (a) where applicable, in payment of all Losses of and incidental to the appointment of the Receiver and the exercise of all or any of his or her powers,
- (b) where applicable, in payment of the Receiver's remuneration at such rate as may be agreed with the Security Trustee,
- (c) to the payment in full of the Secured Obligations (excluding Secured Obligations with respect to Secured Hedge Agreements and Secured Cash Management Agreements that are not Designated Secured Hedge Agreements or Designated Secured Cash Management Agreements) secured by such Collateral (the amounts so applied to be distributed among the Secured Parties

in accordance with the order of priority set forth in Section 2.18(b) of the Credit Agreement based on respective amounts of such Secured Obligations owed to them on the date of any such distribution),

- (d) to the payment in full of the Obligations in respect of Secured Hedge Agreements and Secured Cash Management Agreements (the amounts so applied to be distributed among the Secured Parties *pro rata* in accordance with the respective amounts of such Obligations owed to them on the date of any such distribution), and
- (e) if no Chargor is under any further actual or contingent liability under the Credit Agreement, in payment of the surplus (if any) to the person or persons entitled to it

The application of monies received by an Administrator will be governed by the IA

**SECTION 5**  
**GENERAL SECURITY PROVISIONS**

**20 GENERAL SECURITY PROVISIONS**

**20 1 Continuing security**

This Debenture is a continuing security and regardless of any intermediate payment or discharge in whole or in part to any Secured Party, shall be binding until the date (the "**Discharge Date**") on which

- (a) all of the Secured Obligations have been unconditionally and irrevocably paid or discharged in full to the satisfaction of the Security Trustee, and
- (b) the Security Trustee is satisfied that all of the Secured Parties have ceased to have any commitment, obligation or other liability (whether actual or contingent) to make any credit or provide any other accommodation to any Loan Party under any Loan Document or otherwise or to any other person in respect of whose liabilities any Loan Party has undertaken a liability to the Security Trustee or any other Secured Party under any Loan Document or Ancillary Document.

**20 2 Additional security**

This Debenture is in addition to and is not in any way prejudiced by any other guarantee or Lien now or subsequently held by or on behalf of the Security Trustee or any other Secured Party

**20 3 Waiver of defences**

The obligations of each Chargor under this Debenture will not be discharged, impaired or otherwise affected by any act, omission, matter or thing which, but for this Clause 20 3, would reduce, release or prejudice any of its obligations under this Debenture, including (whether or not known to it or the Security Trustee)

- (a) any time, waiver, consent or other indulgence granted to, or composition with, any Loan Party or any other person other than any time, waiver, consent or other indulgence granted to a Chargor in relation to an obligation or obligations set out in this Debenture, in which case the relevant Chargor shall be entitled to rely on such time, waiver or other indulgence for the purpose of the discharge of the relevant obligation or obligations under this Debenture,
- (b) the release of any other Loan Party or any other person under the terms of any composition or arrangement with any creditor,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Lien over the assets of, any Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any Instrument or any failure to take, or failure to realise the full value of, any Lien **provided that** where the Security Trustee makes a variation, compromise or release of any rights of a Chargor contained in this Debenture then the relevant Chargor

shall be entitled to rely on such variation, compromise or release for the purposes of the discharge of the relevant obligation or obligations under this Debenture,

- (d) any incapacity or lack of power, authority or legal personality of or Insolvency or change in the members or status of any Chargor or any other person, or
- (e) any disclaimer, unenforceability, illegality, invalidity or ineffectiveness of any of the Secured Obligations or any other obligation of any person under any Loan Document or any other Instrument or Lien

#### **20.4 Immediate recourse**

Each Chargor waives any right it may have of first requiring any Secured Party to proceed against or enforce any Lien or other rights or claim payment from any other person before claiming from it under this Debenture. This waiver applies irrespective of any applicable law and regulation or any provision of any Loan Document to the contrary

#### **20.5 Discretion in enforcement**

Until the Discharge Date, the Security Trustee or any Receiver may

- (a) refrain from applying or enforcing any other monies, Liens or other rights held or received by it in respect of the Secured Obligations or apply and enforce them in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and no Chargor shall be entitled to the benefit of the same, and
- (b) hold in an interest-bearing suspense account any monies received from any Chargor or on account of the Secured Obligations

#### **20.6 Subsequent Liens**

At any time following

- (a) the Security Trustee or any other Secured Party's receipt of notice (either actual or constructive) of any subsequent Lien affecting the Secured Assets (other than a Permitted Lien);
- (b) the Insolvency of any Chargor, or
- (c) any disposal of all or any of the Secured Assets in breach of Clause 7.2 (*No disposals*),

any Secured Party may open a new account or accounts in the name of the Chargor (whether or not it permits any existing account to continue). If a Secured Party does not open such a new account, it shall nevertheless be treated as if it had done so at the time when the notice was received or was deemed to have been received or, as the case may be, the Insolvency commenced or the assignment or transfer occurred and from that time all payments made by the Chargor to the Secured Party or received by the Secured Party for the account of the Chargor shall be credited or treated as having

been credited to the new account and shall not operate to reduce the amount secured by this Debenture at the time when the Secured Party received or was deemed to have received that notice or, as the case may be, the Insolvency commenced or the assignment or transfer occurred

## **21 POWER OF ATTORNEY**

### **21.1 Appointment**

Each Chargor irrevocably and by way of security appoints the Security Trustee and any Receiver and every delegate referred to in Clause 15.4 (*Delegation*) and each of them jointly and also severally to be its attorney (with full powers of substitution and delegation) and in its name or otherwise and on its behalf and as its act and deed and only whilst an Event of Default is continuing to execute, deliver and perfect all Instruments and other documents and do any other acts and things which may be required or which the attorney may consider desirable

- (a) to carry out any obligation imposed on that Chargor by this Debenture and which has not been carried out by that Chargor,
- (b) to carry into effect any disposal or other dealing by the Security Trustee or any Receiver,
- (c) to convey or transfer any right in land or any other asset,
- (d) to get in the Secured Assets, and
- (e) generally to enable the Security Trustee and any Receiver to exercise the respective rights conferred on them by this Debenture or by applicable law and regulation,

and each Chargor undertakes to ratify and confirm all acts and things done by an attorney in the exercise or purported exercise of its powers and all monies spent by an attorney shall be deemed to be expenses incurred by the Security Trustee under this Debenture

### **21.2 Irrevocable power**

Each Chargor acknowledges that each power of attorney granted by Clause 21.1 is granted irrevocably and for value as part of this Security to secure a proprietary interest of, and the performance of obligations owed to, the donee within the meaning of s4 Powers of Attorney Act 1971

## **22 RETENTION OF SECURITY**

### **22.1 Release of Security**

Following the Discharge Date and at the request and cost of the relevant Chargor, the Security Trustee shall, as soon as reasonably practicable after receipt of that request, release and discharge this Security and re-assign the assets assigned to the Security Trustee under this Debenture to the Chargor (or as it shall direct), at all times without recourse, representation or warranty and subject to the provisions of the Credit



Agreement, Clause 22 2 and the rights of any person having prior rights over those assets Any release or discharge of this Security or re-assignment shall not release or discharge the Chargor from any liability to the Security Trustee or any other Secured Party for the Secured Obligations or any other monies which exists independently of this Debenture

## **22 2 Reinstatement**

- (a) Any release, settlement, discharge, re-assignment or arrangement (in this Clause 22, a "**release**") made by the Security Trustee on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to Insolvency
- (b) If any avoidance, reduction or clawback occurs or order is made as referred to in Clause 22 2(a), then the release given by the Security Trustee shall have no effect and shall not prejudice the right of the Security Trustee to enforce this Security in respect of the Secured Obligations As between the Chargors and the Security Trustee, this Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Security Trustee as security for the Secured Obligations

## **23 PRIOR LIENS**

### **23 1 Redemption**

The Security Trustee may at any time

- (a) redeem, or procure the transfer to itself of, any prior Lien over any Secured Assets, or
- (b) settle and pass the accounts of the holder of any prior Lien Any accounts so settled and passed shall be conclusive and binding on the Chargor.

### **23 2 Costs of redemption**

All principal monies, interest, costs, expenses and other amounts incurred in and incidental to any redemption or transfer under Clause 23 1 shall be paid by the Chargors to the Security Trustee on demand, in each case together with interest calculated in the manner referred to in Section 2 13(e) of the Credit Agreement

## **24 SECURITY TRUSTEE PROVISIONS**

### **24 1 Appointment of the Security Trustee**

- (a) Each of the Secured Parties has irrevocably appointed the Security Trustee to act as its trustee in connection with the Security Documents
- (b) Each of the Secured Parties has authorised the Security Trustee to exercise the rights specifically given to the Security Trustee under or in connection with the Loan Documents together with any other incidental rights

## **24.2 Role of the Security Trustee**

- (a) The Security Trustee shall hold the benefit of the Security Documents on trust for the Secured Parties
- (b) If the Security Trustee receives notice from a party referring to this Debenture, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Secured Parties
- (c) The Security Trustee does not have any duties except those expressly set out in the Loan Documents. In particular, the Security Trustee shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000

## **24.3 No fiduciary duties**

The Security Trustee shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account

## **24.4 Business with the Chargor**

The Security Trustee may accept deposits from, lend money to, invest in and generally engage in any kind of banking or other business with the Chargor and any Affiliate of the Chargor

## **24.5 Discretions of the Security Trustee**

- (a) The Security Trustee may rely on
  - (i) any representation, notice, document or other communication reasonably believed by it to be genuine, correct and appropriately authorised, and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his or her knowledge or within his or her power to verify
- (b) The Security Trustee may assume that:
  - (i) no Default has occurred, and
  - (ii) any right vested in any Secured Party has not been exercised
- (c) The Security Trustee may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts
- (d) The Security Trustee may act in relation to the Loan Documents through its personnel and agents
- (e) Notwithstanding that the Security Trustee and one or more of the other Secured Parties may from time to time be the same entity, that entity has entered into the Loan Documents in those separate capacities. However, where the Loan Documents provide for the Security Trustee and the other Secured

Parties to provide instructions to or otherwise communicate with one or more of the others of them, then for so long as they are the same entity it will not be necessary for there to be any formal instructions or other communication, notwithstanding that the Loan Documents provide in certain cases for the same to be in writing

- (f) Except as otherwise expressly provided in this Debenture, the Security Trustee shall be and is hereby authorised to assume without enquiry, in the absence of actual notice to the contrary, that each of the Chargors and the other parties to any of the Loan Documents (other than the Security Trustee) is duly performing and observing all the covenants and provisions contained in or arising pursuant to this Debenture or any other Loan Document respectively relating to it and on its part to be performed and observed

#### **24.6 Required Lenders' instructions**

- (a) Unless a contrary indication appears in a Loan Document, the Security Trustee shall
  - (i) act in accordance with any instructions given to it by the Required Lenders (or, if so instructed by the Required Lenders or in the absence of an instruction from them, refrain from acting or exercising any power, authority, discretion or other right vested in it as Security Trustee), and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Required Lenders
- (b) Unless a contrary indication appears in a Loan Document, any instructions given by the Required Lenders will be binding on all the Lenders
- (c) The Security Trustee may refrain
  - (i) from acting (in accordance with the instructions of the Required Lenders (or, if appropriate, the Lenders) or otherwise) until it has received such security and/or indemnity as it may require for any Losses (including any associated irrevocable VAT) which it may incur in complying with the instructions, and
  - (ii) from doing anything which may in its opinion be a breach of any law or duty of confidentiality or be otherwise actionable at the suit of any person
- (d) In the absence of instructions from the Required Lenders (or, if appropriate, the Lenders), the Security Trustee may act (or refrain from taking action) as it considers to be in the best interest of the Required Lenders
- (e) The Security Trustee is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Loan Document

#### **24 7 Responsibility for documentation**

The Security Trustee is not responsible for

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by any Secured Party, either Chargor or any other person given in or in connection with any Loan Document, or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Loan Document or any other agreement, arrangement or other document entered into, made or executed in anticipation of or in connection with any Loan Document

#### **24 8 Exclusion of liability**

- (a) Without limiting Clause 24 8(b), the Security Trustee will not be liable for any action taken by it under or in connection with any Loan Document, unless directly caused by its gross negligence or wilful misconduct
- (b) No Party may take any proceedings against any officer, employee or agent of the Security Trustee in respect of any claim it might have against the Security Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Loan Document. Any officer, employee or agent of the Security Trustee may rely on this Clause 24 8(b)
- (c) The Security Trustee will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Loan Documents to be paid by the Security Trustee if the Security Trustee has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Trustee for that purpose
- (d) The Security Trustee shall not be under any obligation to insure any of the Secured Assets or any certificate, note, bond or other evidence in respect of any of them or to require any other person to maintain that insurance and shall not be responsible for any Losses which may be suffered as a result of the lack or inadequacy of that insurance.
- (e) The Security Trustee shall not be responsible for any Losses occasioned to the Secured Assets, however caused, by either Chargor or any other person by any act or omission on the part of any person (including any bank, broker, depository, warehouseman or other intermediary or any clearing system or the operator of it), or otherwise, unless those Losses are occasioned by the Security Trustee's own gross negligence or wilful misconduct. In particular the Security Trustee shall be not responsible for any Losses which may be suffered as a result of any assets comprised in the Secured Assets, or any deeds or documents of title to them, being uninsured or inadequately insured or being held by it or by or to the order of any custodian or by clearing organisations or their operators or by any person on behalf of the Security Trustee

- (f) The Security Trustee shall have no responsibility to the Chargor as regards any deficiency which might arise because either Chargor is subject to any tax in respect of the Secured Assets or any income or any proceeds from or of them
- (g) The Security Trustee shall not be liable for any failure, omission or defect in giving notice of, registering or filing, or procuring registration or filing of, or otherwise protecting or perfecting, the security constituted over the Secured Assets

#### **24 9 Lenders' indemnity to the Security Trustee**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Trustee against any Losses sustained or incurred by the Security Trustee (otherwise than by reason of the Security Trustee's gross negligence or wilful misconduct) in acting as the Security Trustee under the Loan Documents (unless the Security Trustee has been reimbursed by a Chargor pursuant to a Loan Document)
- (b) The Security Trustee may, in priority to any payment to the Lenders, indemnify itself out of the Secured Assets in respect of, and pay and retain, all sums necessary to give effect to this indemnity and to all other indemnities given to it in the other Loan Documents in its capacity as Security Trustee. The Security Trustee shall have a lien on the security constituted over the Secured Assets and the proceeds of enforcement of this Debenture for all such sums

#### **24 10 Additional Security Trustee**

The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate Security Trustee or as a co-trustee jointly with it (any such person, an "Additional Security Trustee").

- (a) if it is necessary in performing its duties and if the Security Trustee considers that appointment to be in the interest of the Secured Parties, or
- (b) for the purposes of complying with or confirming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant, or
- (c) for the purposes of obtaining or enforcing any judgment or decree in any jurisdiction,

and the Security Trustee will give notice to the other Parties of any such appointment

#### **24 11 Confidentiality**

- (a) In acting as Security Trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its syndication or agency division which shall be treated as a separate entity from any other of its divisions or departments

- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it
- (c) Notwithstanding any other provision of any Loan Document to the contrary, the Security Trustee is not obliged to disclose to any other person
  - (i) any confidential information, or
  - (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty

#### **24 12 Relationship with the Lenders**

The Security Trustee may treat each Lender as a Lender, entitled to payments under this Debenture and acting through its Facility Office unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Debenture

#### **24 13 Credit appraisal by the Lenders**

Without affecting the responsibility of each Chargor for information supplied by it or on its behalf in connection with any Loan Document, each Lender has confirmed to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Loan Document, including

- (a) the financial condition, status and nature of each Chargor,
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document,
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any party or any of its respective assets under or in connection with any Loan Document, the transactions contemplated by the Loan Documents or any other agreement, arrangement or other document entered into, made or executed in anticipation of, under or in connection with any Loan Document, and
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee, any other party or any other person under or in connection with any Loan Document, the transactions contemplated by the Loan Documents or any other agreement, arrangement or other document entered into, made or executed in anticipation of, under or in connection with any Loan Document

#### **24 14 Management time**

Any amount payable to the Security Trustee by way of fees or indemnity under this Debenture or the Credit Agreement shall include the cost of utilising the Security

Trustee's management time or other resources (which will be calculated on the basis of such reasonable daily or hourly rates as the Security Trustee may notify to the Chargors and the Lenders)

#### **24 15 Security Documents**

- (a) The Security Trustee shall accept without investigation, requisition or objection whatever title any person may have to the assets which are subject to the Security Documents and shall not
  - (i) be bound or concerned to examine or enquire into the title of any person, or
  - (ii) be liable for any defect or failure in the title of any person, whether that defect or failure was known to the Security Trustee or might have been discovered upon examination or enquiry and whether it is capable of remedy or not
- (b) Upon the appointment of any successor Security Trustee under Clause 24, the resigning Security Trustee shall execute and deliver any documents and do any other acts and things which may be necessary to vest in the successor Security Trustee all the rights vested in the resigning Security Trustee under the Security Documents
- (c) Each of the other Secured Parties
  - (i) authorises the Security Trustee to hold each mortgage or charge created pursuant to any Loan Document in its sole name as security trustee for the Secured Parties; and
  - (ii) requests the Land Registry to register the Security Trustee as the sole proprietor of any mortgage or charge so created

#### **24 16 No obligation to remain in possession**

If the Security Trustee, any Receiver or any delegate takes possession of all or any of the Secured Assets, it may from time to time in its absolute discretion relinquish such possession

#### **24 17 Security Trustee's obligation to account**

The Security Trustee shall not in any circumstances (either by reason of taking possession of the Secured Assets or for any other reason and whether as mortgagee in possession or on any other basis)

- (a) be liable to account to any Chargor or any other person for anything except the Security Trustee's own actual receipts which have not been distributed or paid to that Chargor or the persons entitled or at the time of payment believed by the Security Trustee to be entitled to them, or
- (b) be liable to any Chargor or any other person for any principal, interest or Losses from or connected with any realisation by the Security Trustee of the

Secured Assets or from any act, default, omission or misconduct of the Security Trustee, its officers, employees or agents in relation to the Secured Assets or from any exercise or non-exercise by the Security Trustee of any right exercisable by it under this Debenture unless they shall be caused by the Security Trustee's own gross negligence or wilful misconduct

**24 18 Receiver's and delegate's obligation to account**

All the provisions of Clause 24 17 shall apply in respect of the liability of any Receiver or Administrator or delegate in all respects as though every reference in Clause 24 17 to the Security Trustee were instead a reference to the Receiver or, as the case may be, Administrator or delegate



## **SECTION 6 ADMINISTRATION**

### **25 CREDIT AGREEMENT PROVISIONS**

Sections 1 04 (*Exchange Rates, Currency Equivalents*), 2 17 (*Taxes*), 9 01(b) – (d) (*Notes, Communications*), 9 05 (*Expenses, Indemnity*), 9 06 (*Right of Set-off*) and 9 19 (*Judgment Currency*) of the Credit Agreement shall apply to this Debenture as if they were set out in full again here, with references to the Administrative Agent or the Lenders including the Security Trustee and with any other changes which are necessary to fit this context

### **26 INDEMNITY**

#### **26 1 General indemnity**

The Chargors shall on demand indemnify and keep indemnified the Security Trustee and every Receiver, attorney, manager, agent or other person appointed by the Security Trustee under this Debenture and their respective employees in respect of all Losses incurred or suffered by any of them in or directly or indirectly as a result of the exercise of any of the rights vested in them under this Debenture and against all Losses suffered or incurred by any of them in respect of any matter or thing done or omitted relating to the Secured Assets, together with interest calculated in the manner referred to in Section 2 13(e)(11)(y) (*Interest*) of the Credit Agreement from the earlier of the date of demand and the date of payment by that person up to the date of receipt by that person (both before and after judgement) The Security Trustee and any Receiver may retain and pay all those sums out of any monies received by it or him or her under this Debenture

#### **26 2 Indemnity for breach**

The Chargors shall on demand indemnify and keep indemnified the Security Trustee in respect of all Losses occasioned by any breach of any of its covenants or other obligations under this Debenture or otherwise relating to all or any part of the Secured Assets, together with interest calculated in the manner referred to in Section 2 13(e)(11)(y) (*Interest*) of the Credit Agreement from the earlier of the date of demand by the Security Trustee and the date of payment up to the date of receipt by the Security Trustee (both before and after judgement)

### **27 TRANSFERS**

#### **27.1 Security Trustee**

The Security Trustee may assign any or all of its rights and transfer any or all of its obligations under this Debenture to a successor appointed pursuant to Section 8 09 (*Successor Administrative Agent*) of the Credit Agreement

#### **27 2 Chargors**

Neither Chargor may assign any of its rights or transfer any of its rights or obligations under this Debenture

### **27.3 Disclosure of information**

The Security Trustee may disclose any information about either Chargor in accordance with and subject to Section 9.16 (*Confidentiality*) of the Credit Agreement

## **28 COMMUNICATIONS**

### **28.1 Communications in writing**

Any communication to be made or provided under or in connection with this Debenture (including any notices, waivers, consents or other documents) shall be made or provided in English and in writing and, unless otherwise stated, may be delivered by fax, post or personal delivery

### **28.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication to be made or delivered under or in connection with this Debenture is

- (a) in the case of the Security Trustee and the Chargors either that identified with its name in Schedule 9.01 of the Credit Agreement or that identified in the execution of this Debenture at the end of the Schedules, or
- (b) may in the alternative in the case of any claim form, judgment or other notice of process on either Chargor be delivered or sent to its agent for service of process named in Clause 36.2 (*Service of process*) or its registered office from time to time

## **29 CALCULATIONS AND CERTIFICATES**

### **29.1 Accounts**

In any litigation or other proceedings arising out of or in connection with this Debenture, the entries made in the accounts maintained by the Security Trustee or any other Secured Party are prima facie evidence of the matters to which they relate

### **29.2 Certificates or determinations**

Any certificate or determination of the Security Trustee as to any matter provided for in this Debenture is, in the absence of manifest error, conclusive evidence of the matters to which it relates

## **30 PARTIAL INVALIDITY**

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

**31 REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Trustee, any remedy or other right under this Debenture shall operate as a waiver, nor shall any single or partial exercise of any remedy or other right prevent any further or other exercise or the exercise of any other right. The remedies and other rights provided in this Debenture are cumulative and not exclusive of any remedies and other rights provided by law.

**32 AMENDMENTS AND WAIVERS**

Any term of this Debenture may be amended or waived only with the written consent of the Security Trustee and each Chargor and any such amendment or waiver will be binding on all Parties.

**33 COUNTERPARTS**

This Debenture may be executed in any number of counterparts, and this has the same effect as if the signatures (and if applicable, seals) on the counterparts were on a single copy of this Debenture.

**34 CONDUCT OF BUSINESS**

No provision of this Debenture will

- (a) interfere with the right of any Secured Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit,
- (b) oblige any Secured Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim, or
- (c) oblige any Secured Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of taxes.

**SECTION 7**  
**GOVERNING LAW AND ENFORCEMENT**

**35 GOVERNING LAW**

This Debenture and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, English law

**36 ENFORCEMENT**

**36 1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute regarding the existence, validity or termination of this Debenture) (a "**Dispute**")
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary
- (c) This Clause 36 1 is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions

**36 2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, MPMG
  - (i) irrevocably appoints MPML at the address stated above as its agent for service of process in relation to any proceedings before the English courts in connection with this Debenture, and
  - (ii) agrees that a failure by the process agent to notify it of the process will not invalidate the proceedings concerned
- (b) If the appointment by the MPMG of MPML ceases to be effective, it shall immediately appoint another person in England as its agent for service of process in relation to any proceeding before the English courts in connection with this Debenture. If it fails to do so (and that failure continues for a period of not less than 5 Business Days), the Security Trustee shall be entitled to appoint such a person by notice to the Chargors

**37 LIMITATION OF ENFORCEMENT MPMG**

**37 1 Limitation**

The Security Trustee agrees to restrict the enforcement of the security granted by MPMG pursuant to this Debenture if and to the extent that (i) the relevant enforcement proceeds are applied in satisfaction of any liabilities of MPMG's direct or

indirect shareholder(s) (upstream) or any entity affiliated to such shareholder (*verbundenes Unternehmen*) within the meaning of section 15 of the German Stock Corporation Act (*Aktiengesetz*) (cross-stream) (other than the liabilities of any of MPMG's subsidiaries and, for the avoidance of doubt, MPMG's own liabilities) and (ii) such enforcement of the security would cause the amount of the MPMG's net assets (*Reinvermögen*), as adjusted pursuant to the following provisions, to fall below the amount of its registered share capital (*Stammkapital*) (*Begründung einer Unterbilanz*) or to increase any already existing capital impairment (*Vertiefung einer Unterbilanz*) in violation of sections 30 and 31 of the German Limited Liability Company Act (*GmbHG*), (each such event is hereinafter referred to as a "**Capital Impairment**")

For the purposes of the calculation of a Capital Impairment, the following balance sheet items shall be adjusted as follows

- (a) the amount of any increase of MPMG's registered share capital after the date of this Debenture that has been effected without prior written consent of the Security Trustee shall be deducted from MPMG's registered share capital,
- (b) loans provided to MPMG by any member of the group shall be disregarded if and to the extent such loans are subordinated or are considered subordinated by operation of law and such loans are not shown in the balance sheet as a liability of MPMG, and
- (c) loans or other contractual liabilities incurred in violation of the provisions of the Loan Documents shall be disregarded

### 37 2 Disposal of relevant assets

In a situation where MPMG would not have sufficient assets to maintain its registered share capital after satisfaction (in whole or in part) of the relevant demand, MPMG shall dispose of all assets, to the extent legally permitted, which are not necessary for its business (*nicht betriebsnotwendig*) on market terms where the relevant assets are shown in the balance sheet of MPMG with a book value which is significantly lower than the market value of such assets, unless such disposal would not be commercially justifiable, provided that the Security Trustee consents to the fact that a disposal would not be commercially justifiable

### 37 3 Management Notification/Auditor's Determination

- (a) The limitation in this Clause **Error! Reference source not found.** shall apply, subject to the following requirements, if following a notice by the Security Trustee that it intends to enforce any security granted under this Debenture, MPMG notifies the Security Trustee (the "**Management Notification**") within ten (10) days upon receipt of the relevant notice that a Capital Impairment would occur (setting out in reasonable detail to what extent a Capital Impairment would occur and providing prima facie evidence that a realisation or other measures undertaken in accordance with the mitigation provisions set out above would not prevent such Capital Impairment)

- (b) If the Management Notification is contested by the Collateral Agent, the Security Trustee shall nevertheless be entitled to enforce any security granted under this Debenture up to such amount, which is, based on the Management Notification, undisputed between itself and the MPMG. In relation to the amount which is in dispute, MPMG undertakes (at its own cost and expense) to arrange for the preparation of a balance sheet by its auditors in order to have such auditors determine whether (and if so, to what extent) any enforcement under this Debenture would cause a Capital Impairment (the "**Auditor's Determination**"). The Auditor's Determination shall be prepared, taking into account the adjustments set out above in relation to the calculation of a Capital Impairment, by applying the generally accepted accounting principles applicable from time to time in Germany (*Grundsätze ordnungsmaßiger Buchführung*) based on the same principles and evaluation methods as consistently applied by MPMG in the preparation of its financial statements, in particular in the preparation of its most recent annual balance sheet, and taking into consideration applicable court rulings of German courts. MPMG shall provide the Auditor's Determination to the Security Trustee within thirty (30) days from the date on which the Security Trustee contested the Management Notification in writing. The Auditor's Determination shall be binding on MPMG and the Collateral Agent.
- (c) If, and to the extent that, any security under this Debenture has been enforced without regard to the limitation set forth in Clause 37.1 because the amount of the available net assets pursuant to the Auditor's Determination is lower than the amount stated in the Management Notification, the Security Trustee shall upon written demand of MPMG to the Security Trustee repay any amount (if and to the extent already paid to the Collateral Agent) up to and including the amount calculated in the Auditor's Determination as of the date the demand to enforce any security under this Agreement was made and in accordance with Clause 37.3(b) above, provided such demand for repayment is made to the Security Trustee within six (6) months (*Ausschlussfrist*) from the date any security under this Debenture has been enforced.
- (d) If pursuant to the Auditor's Determination the amount of the available net assets is higher than set out in the Management Notification, the Security Trustee shall be entitled to enforce into such available net assets accordingly.

#### 37.4 Exceptions

Notwithstanding the above, the limitations pursuant to this Clause **Error! Reference source not found.** shall not apply:

- (a) if MPMG is (i) party as dominated entity (*beherrschtes Unternehmen*) of a domination agreement (*Beherrschungsvertrag*) and/or a profit and loss transfer agreement (*Gewinnabführungsvertrag*) pursuant to section 30 para 1 sentence 2 of the German Limited Liability Company Act (*GmbHG*), unless the dominating entity is insolvent or the MPMG's claim for loss compensation against the dominating entity pursuant to Section 302 AktG is not valuable (*vollwertig*),

- (b) if MPMG has a recourse right (*Rückgriffsanspruch*) pursuant to section 30 para 1 sentence 2 of the German Limited Liability Company Act (*GmbHG*), towards its direct or indirect shareholder(s) (upstream) or any entity affiliated to such shareholder (*verbundenes Unternehmen*) within the meaning of section 15 of the German Stock Corporation Act (*Aktiengesetz*) (cross-stream) which is fully recoverable (*werthaltig*),
- (c) for so long as MPMG fails to deliver the Management Notification and/or the Auditor's Determination pursuant to Clause 37.3 unless MPMG proves in a court proceeding that the disputed amount is necessary for maintaining its registered share capital,
- (d) to any amounts borrowed under the Loan Documents to the extent the proceeds of such borrowing are on-lent to MPMG or its Subsidiaries to the extent that any amounts so on-lent are still outstanding at the time the relevant demand is made against MPMG and the repayment of such loans as a result of such on-lending is not prohibited by operation of law, or
- (e) to any amounts borrowed under the Loan Documents by MPMG to the extent that any amounts so borrowed are still outstanding at the time the relevant demand for repayment is made against the MPMG

#### **EXECUTION:**

The parties have shown their acceptance of the terms of this Debenture by executing it, in the case of each Chargor as a deed, at the end of the Schedules

**SCHEDULE 1**  
**COLLECTION AND PAYMENT ACCOUNTS**  
**Part 1**

**1. Collection Accounts**

<b>Name of account holder</b>	<b>Name and address of entity at which account is held</b>	<b>Account details</b>
Momentive Performance Materials GmbH	Deutsche Bank, London branch	Account no 29235600006 Sort code 40-50-81 SWIFT DEUTGB2L IBAN GB39DEUT40508129235600

**Part 2**

**2. Payment Accounts**

<b>Name of account holder</b>	<b>Name and address of entity at which account is held</b>	<b>Account details</b>



## **SCHEDULE 2 PROPERTIES**

### **Part 1 Registered land**

(Freehold (including commonhold) property (if any) in England and Wales of which the Chargor is registered as the proprietor at Land Registry)

<b>County and District/ London Borough</b>	<b>Description of Property</b>	<b>Title Number</b>
--	--------------------------------	---------------------

### **Part 2 Unregistered land**

(Freehold property (if any) in England and Wales title to which is not registered at Land Registry of which the Chargor is the owner)

**The freehold/leasehold property known as and comprised in the following title deed(s) or other document(s) of title:**

<b>Description</b>	<b>Date</b>	<b>Document</b>	<b>Parties</b>
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**SCHEDULE 3**  
**NOTICE OF ASSIGNMENT OF INSURANCE**

*[On relevant Chargor's notepaper]*

To *[Name and address of insurer]*

*[Date]*

Dear Sirs

**Policy number [●]**

We give you notice that by a Debenture (the "**Debenture**") dated [●] 201[●] and entered into by us in favour of JPMorgan Chase Bank, N A (as Security Trustee), as defined in the Debenture), we have assigned all our rights in the insurance policy, brief details of which are set out below (the "**Policy**") and all monies which may be payable to or received by us under it

Please note the following

- (a) we irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary) to pay all monies payable by you to us under the Policy, including the proceeds of all claims, to such bank account as the Security Trustee may from time to time specify in writing<sup>1</sup>,
- (b) all of the powers, discretions, remedies and other rights which would, but for the Debenture, be vested in us under and in respect of the Policy are exercisable by the Security Trustee, and
- (c) we agree that
  - (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Trustee's prior written consent, and
  - (ii) you are authorised to disclose any information in relation to the Policy to the Security Trustee at the Security Trustee's request

Please acknowledge receipt of this notice, and confirm your agreement to it, by signing the acknowledgement on the enclosed copy letter and returning it to the Security Trustee, [●] at [●] marked for the attention of [●]

This letter is governed by, and shall be construed in accordance with, English law

Yours faithfully

*[Name of [relevant] Chargor]*  
**By: [Name of signatory]**

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<sup>1</sup> Include here details of the account into which sums are to be paid

**Details of Policy**

Name of insured [●]

Nature of policy [●]

Policy number [●]

Expiry date [●]

[On copy letter only ]

## ACKNOWLEDGEMENT

To *[Security Trustee]*

We acknowledge receipt of a notice dated [●] 201[●] addressed to us by *[Name of [relevant] Chargor]* (the "Chargor") regarding the Policy (as defined in that notice)

We confirm that

- (a) we consent to the assignment of the Policy and will comply with the terms of that notice,
- (b) we have not, as at the date of this acknowledgement, received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor under or in respect of the Policy;
- (c) if the Chargor is in breach of any of its obligations, express or implied, under the Policy or if any event occurs which would permit us to terminate, cancel or surrender the Policy we will
  - (i) immediately on becoming aware of it, give you written notice of that breach, and
  - (ii) accept as an adequate remedy for that breach, performance by you of those obligations within 30 days of that notice,
- (d) we confirm that no waiver of any of the Chargor's rights under and no amendment, novation, rescission or other termination by the Chargor of, the Policy shall be effective without the prior written consent of the Security Trustee, and
- (e) we confirm that we shall not exercise any right of combination, consolidation or set-off which we may have in respect of any debt owed to us by the Chargor and we shall send you copies of all statements, orders and notices given by us relating to that debt

.....  
*[Name of insurer]*

By: *[Name of signatory]*

Dated·

**SCHEDULE 4**  
**NOTICE OF CHARGE OF COLLECTION ACCOUNT**

*[On Chargor's notepaper]*

To *[Name and address of account bank]*

*[Date]*

Dear Sirs

**Collection Account number[s]: [●]**

We refer to Collection Account number[s] [●] (the "Collection Account[s]")

We give you notice that by a Debenture (the "**Debenture**") dated [●] 201[●] and entered into by us in favour JPMorgan Chase Bank, N A (as Security Trustee, as defined in the Debenture) we have charged all our rights in any credit balances on the Collection Account[s] (the "**Balances**") and the indebtedness represented by the Collection Account[s]

We irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary):

- (a) that all rights, interests and benefits whatsoever accruing to or arising from the Collection Account[s] or Balances shall be exercisable by and shall belong to the Security Trustee For the avoidance of doubt
  - (i) we are not permitted to withdraw any amount from the Collection Account[s] without the prior written consent of the Security Trustee,
  - (ii) all instructions related to monies held in the Collection Account[s] must be signed by one authorised signatory of the Security Trustee set out in the following list.

Name	Position	Contact
[Angie Koukouvani]	[Operations Specialist]	[Tel [REDACTED]]
[Angela Travis]	[Operations Specialist]	[Tel [REDACTED]]
[Mike Culbertson]	[Senior Operations Manager]	[Tel [REDACTED]]
[Helen Mathie]	[Assistant Vice President]	[Tel [REDACTED]]
[Tim Jacob]	[Senior Vice President]	[Tel [REDACTED]]

- (iii) no transfers of monies from the Collection Account[s] can be effected at any time without prior receipt of written instructions from the Security Trustee in compliance with the terms of this notice,
- (b) to disclose to the Security Trustee (without any reference to or further authority from us and without any enquiry by you as to the justification for the disclosure), any information relating to the Collection Account[s] which the Security Trustee may, at any time and from time to time, request;
- (c) at any time and from time to time on receipt by you of any written instruction, including facsimile transmission or email, from the Security Trustee, to release any amount of the Balances and to act in accordance with that instruction (without any reference to or further authority from us and without any enquiry by you as to the justification for the instruction or the validity of the same),
- (d) to comply with the terms of any written notice, statement or instruction in any way relating or purporting to relate to the Collection Account[s], the Balances or the indebtedness represented by it or them which you may receive at any time and from time to time from the Security Trustee (without any reference to or further authority from us and without any enquiry by you as to the justification for the notice, statement or instruction or the validity of it),
- (e) that any existing payment instructions affecting the Collection Account[s] are to be terminated and all payments and communications in respect of the Collection Account[s] should be made only to the Security Trustee, and
- (f) statements shall be supplied to both us and the Security Trustee

We agree that

- (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Trustee's prior written consent, and
- (ii) you are authorised to disclose any information in relation to the Collection Account[s] to the Security Trustee at the Security Trustee's request

Please note

- (1) you may from time to time be instructed, by the Security Trustee (provided at their discretion), to transfer any amounts standing to the credit of the Collection Account[s] to the following account (or such other account as the Security Trustee may from time to time notify to you in writing)

Name of account     [●]

Number of account   [●]

Bank/Bank address   [●]

Sort code            [●], and

- (2) you may be instructed by the Security Trustee to set up an automatic direct debit transfer of any amounts standing to the credit of the Collection Account[s] on a daily basis to such account as the Security Trustee may notify you in writing, including such an account in the name of the Security Trustee.

Please acknowledge receipt of this notice, and confirm your agreement to it, by signing the acknowledgement on the enclosed copy letter and returning it to the Security Trustee, JPMorgan Chase Bank, N A at 25 Bank Street, Canary Wharf, London E14 5JP marked for the attention of Tim Jacob and Helen Mathie

This letter is governed by, and shall be construed in accordance with, English law

Yours faithfully

*[Name of Chargor]*

By: *[Name of signatory]*

## ACKNOWLEDGEMENT

To [●]

We acknowledge receipt of a notice (the "Notice") dated [●] 201[●] addressed to us by *[Name of Chargor]* (the "Chargor") regarding Collection Account number[s]. [●] (the "Collection Account[s]")

We confirm that

- (a) we consent to the charge of the Collection Account[s] and will comply with the terms of the Notice,
- (b) there does not exist in our favour, and we undertake not to create, assert, claim or exercise, any mortgage, fixed or floating charge, assignment or other Lien of any kind or any agreement or arrangement having substantially the same economic or financial effect as any of the above (including any rights of counter-claim, rights of set-off or combination of accounts over or with respect to all or any part of the Collection Account[s] and/or the Balances (as defined in the Notice),
- (c) we have not, as at the date of this acknowledgement, received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor under or in respect of the Collection Account[s] or the Balances,
- (d) we undertake that, on our becoming aware at any time that any person other than the Security Trustee has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of the Collection Account[s] or the Balances, we will immediately give written notice of that to the Security Trustee,
- (e) no fees or periodic charges are payable in respect of the Collection Account[s] and/or Balances, and
- (f) we shall operate the Collection Account[s] in accordance with the terms set out in the Notice

.. .  
for and on behalf of  
*[Name of account bank]*  
By: *[Name of signatory]*  
Dated



**SCHEDULE 5**  
**NOTICE OF CHARGE OF PAYMENT ACCOUNT**

*[On Chargor's notepaper]*

To *[Name and address of account bank]*

*[Date]*

Dear Sirs

**Account number[s]: [●]**

We refer to Account number[s] [●] (the "**Account[s]**")

We give you notice that by a Debenture (the "**Debenture**") dated [●] 2012 and entered into by us in favour of JPMorgan Chase Bank, N A (as Security Trustee, as defined in the **Debenture**) we have charged all our rights in any credit balances on the Account[s] (the "**Balances**") and the indebtedness represented by the Account[s]

We irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary)

- (a) to disclose to the Security Trustee (without any reference to or further authority from us and without any enquiry by you as to the justification for the disclosure), any information relating to the Account[s] which the Security Trustee may, at any time and from time to time, request,
- (b) at any time and from time to time on receipt by you of any written instruction from the Security Trustee, to release any amount of the Balances and to act in accordance with that instruction (without any reference to or further authority from us and without any enquiry by you as to the justification for the instruction or the validity of the same),
- (c) to comply with the terms of any written notice, statement or instruction in any way relating or purporting to relate to the Account[s], the Balances or the indebtedness represented by it or them which you may receive at any time and from time to time from the Security Trustee (without any reference to or further authority from us and without any enquiry by you as to the justification for the notice, statement or instruction or the validity of it),
- (d) statements shall be supplied to both us and the Security Trustee, and
- (e) following receipt of any instruction, notice or statement from the Security Trustee pursuant to paragraphs (b) or (c) above, all rights, interests and benefits whatsoever accruing to or arising from the Account[s] or Balances shall be exercisable by and shall belong to the Security Trustee and shall not be exercisable by us

We agree that

- (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Trustee's prior written consent, and
- (ii) you are authorised to disclose any information in relation to the Account[s] to the Security Trustee at the Security Trustee's request

Please acknowledge receipt of this notice, and confirm your agreement to it, by signing the acknowledgement on the enclosed copy letter and returning it to the Security Trustee, JPMorgan Chase Bank, N A at 25 Bank Street, Canary Wharf, London E14 5JP marked for the attention of Tim Jacob and Helen Mathie

This letter is governed by, and shall be construed in accordance with, English law

Yours faithfully

*[Name of Chargor]*

By: *[Name of signatory]*

## ACKNOWLEDGEMENT

To      Security Trustee

We acknowledge receipt of a notice (the "Notice") dated [●] 201[●] addressed to us by *[Name of Chargor]* (the "Chargor") regarding Account number[s] [●] (the "Account[s]")

We confirm that

- (a) we consent to the charge of the Account[s] and will comply with the terms of the Notice,
- (b) there does not exist in our favour, and we undertake not to create, assert, claim or exercise, any mortgage, fixed or floating charge, assignment or other Lien of any kind or any agreement or arrangement having substantially the same economic or financial effect as any of the above (including any rights of counter-claim, rights of set-off or combination of accounts) over or with respect to all or any part of the Account[s] and/or the Balances (as defined in the Notice),
- (c) we have not, as at the date of this acknowledgement, received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor under or in respect of the Account[s] or the Balances,
- (d) we undertake that, on our becoming aware at any time that any person other than the Security Trustee has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of the Account[s] or the Balances, we will immediately give written notice of that to the Security Trustee,
- (e) no fees or periodic charges are payable in respect of the Account[s] and/or Balances, and
- (f) we shall operate the Account[s] in accordance with the terms set out in the Notice

.. . .  
for and on behalf of  
*[Name of account bank]*  
By: *[Name of signatory]*  
Dated

## SCHEDULE 6

### NOTICE OF [ASSIGNMENT] [CHARGE] OVER ACCOUNTS

*[On relevant Chargor's notepaper]*

To *[Name and address of other party]*

*[Date]*

Dear Sirs

*[Name and date of Account]*

We refer to an agreement dated [●] between us and you (as amended or novated from time to time, the "Agreement")

We give you notice that by a Debenture (the "**Debenture**") dated [●] 2013 and entered into by us in favour of JPMorgan Chase Bank, N A (as Security Trustee, as defined in the Debenture), we have [assigned] [charged] all our rights in the book debts and other rights to receive payments arising out of the Agreement

Please note the following

- (a) we shall at all times remain solely liable to you for the performance of all of the obligations assumed by us under or in respect of the Agreement,
- (b) we irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary) to pay any monies payable by you to us under the Agreement to [●] or such other account as the Security Trustee may from time to time notify to you in writing,
- (c) we agree that
  - (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Trustee's prior written consent, and
  - (ii) you are authorised to disclose any information in relation to the Agreement to the Security Trustee at the Security Trustee's request

This letter is governed by, and shall be construed in accordance with, English law

Yours faithfully

.....  
*[Name of [relevant] Chargor]*

*By: [Name of signatory]*

**SCHEDULE 7**  
**SPECIFIED INVESTMENTS**

1,000 Ordinary shares of £1 each held by Momentive Performance Materials GmbH in Momentive Performance Materials Limited, evidenced by share certificate number 3

**SCHEDULE 8**  
**LOCATION OF INVENTORY**

Momentive Performance Materials Limited 5 Cranfield Road, Lostock, Industrial Estate,  
Bolton BL6 4QD

**EXECUTION of the Debenture:**

**THE CHARGORS**

SIGNED as a deed by, *George F Knight*, )  
Director, duly authorised for and on behalf )  
of **MOMENTIVE PERFORMANCE** )  
**MATERIALS LIMITED** in the presence )  
of )

Witness's signature

Witness's name

(in capitals). *M Stappman*

Witness's address

SIGNED as a deed by  
**MOMENTIVE PERFORMANCE**  
**MATERIALS GMBH**

*[Redacted Signature]*  
Name *G F knight*  
Title *managing director*  
Date *24 April 2013*

**THE SECURITY TRUSTEE**

SIGNED as a deed by , )  
duly authorised for and on behalf of )  
**JPMORGAN CHASE BANK, N.A.** )

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**EXECUTION of the Debenture:**

**THE CHARGORS**

SIGNED as a deed by, )  
Director, duly authorised for and on behalf )  
of **MOMENTIVE PERFORMANCE** )  
**MATERIALS LIMITED** in the presence )  
of )

Witness's signature

Witness's name  
(in capitals)

Witness's address

SIGNED as a deed by  
**MOMENTIVE PERFORMANCE**  
**MATERIALS GMBH**

\_\_\_\_\_  
Name  
Title  
Date

**THE SECURITY TRUSTEE**

SIGNED as a deed by , )  
duly authorised for and on behalf of )  
**JPMORGAN CHASE BANK, N A.** )

\_\_\_\_\_  
**Peter S. Predun**  
**Executive Director**



**Companies House**

LUCY CHATTERS  
MAYER BROWN INTERNATIONAL LLP  
DX 556  
LONDON AND CITY

Mortgage Section  
Companies House  
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Telephone +44(0) 29 20380371  
DX 33050 Cardiff  
www.companieshouse.gov.uk

Your Ref 21466/20552/12413724  
Our Ref MR01/06376744/NO  
Date 13/05/2013

Dear Madam

**MOMENTIVE PERFORMANCE MATERIALS LIMITED**

Thank you for your enclosed document. Unfortunately, we have been unable to accept it for the following reason(s):

You have stated on the certified copy deed that material has been redacted from the copy deed, by which we take it that the redaction is in relation to the signatures of the officer(s) and/or witness of the charging company. However there are no signatures on the copy deed in relation to the charging company only a typed name of an officer and a typed name of a witness and therefore it appears that the signatures have not been redacted from the copy deed.

Please note that unless the documents are completed correctly and delivered to Companies House within 21 days of the date of creation, we can register the charge only on instruction of an order of court. We are returning your filing fee and you will need to include the fee when you resubmit your document. You may be interested to know that you can file most charge documents on line via our WebFiling service or via a suitable software package. These services offer improvements over the paper service by providing in-built checks on the data submitted and by enabling a faster registration process. However, charges delivered out of time with an order of court cannot be filed electronically. For more information on charge registration, please use the guidance on our website: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

Yours faithfully

Companies House