

MR01

Particulars of a charge

390030/13
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.companieshouse.gov.uk

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

☒ What this form is NOT for
You may not use this form to
register a charge where there is
an instrument Use form MR08

WEDNESDAY



LD3 *L36FVD1S*
23/04/2014 #91
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")

4 For official use

> Filling in this form
Please complete in typescript or in
bold black capitals
All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date 01 05 20 04 22 01 24

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
(THE "SECURITY TRUSTEE")

Name

Name

Name

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

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

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Description

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

Continuation page

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

Description

The supplemental deed dated 15 April 2014 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

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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 *Mye Sam Hantle UP*

X

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

Company name MAYER BROWN INTERNATIONAL LLP

Address 201 BISHOPSGATE

Post town

Country/Region LONDON

Postcode E C 2 M 3 A F

Country UK

DX

Telephone 0203 130 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 or email enquiries@companieshouse.gov.uk

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



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 6376744

Charge code: 0637 6744 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th April 2014 and created by MOMENTIVE PERFORMANCE MATERIALS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd April 2014.

Given at Companies House, Cardiff on 29th April 2014



Companies House



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

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*

Mayer Brown International LLP

Date 22/4/14

Dated 15 APRIL 2014

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

SUPPLEMENTAL DEED

MAYER • BROWN

LONDON

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THIS SUPPLEMENTAL DEED is dated **15 APRIL** 2014 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 ("MPMI") (each a "Chargor" and together, the "Chargors"), and
- (2) **JPMORGAN CHASE BANK, N.A.**, as security trustee for the Secured Parties (the "Security Trustee")

BACKGROUND:

- (A) This Deed is supplemental to (i) a debenture dated 24 April 2013 between the Chargors and the Security Trustee in relation to the Credit Agreement (the "Debenture"), (ii) an account charge dated 12 June 2013 between Momentive Performance Materials GmbH and the Security Trustee (the "Account Charge"), and (iii) a guarantee agreement dated 24 April 2013 between (amongst others) the Chargors and JPMorgan Chase Bank, N.A. (the "Guarantee")
- (B) The Credit Agreement (as such term is defined in the Debenture) is to be amended and restated (the "Restated Credit Agreement") on or about the date hereof. The Chargors wish to confirm that the guarantee granted pursuant to the Guarantee and the Liens granted pursuant to the Debenture continue in full force and effect in relation to the Restated Credit Agreement and, for the avoidance of doubt, grant new Liens in connection with the Restated Credit Agreement as set out below.
- (C) This is a "Foreign Collateral Agreement" as defined in the Restated Credit Agreement.
- (D) The Security Trustee holds the benefit of this Deed, 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 Restated Credit Agreement and Clause 25 (*Security Trustee provisions*) of the Debenture.
- (E) 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.

IT IS AGREED that

1 DEFINITIONS, INTERPRETATION AND EFFECT

- 1.1 Subject to clause 2 (*Amendment of Debenture*) below, terms defined in the Debenture but not in this Deed shall have the same meanings in this Deed (including in the Recitals) as in the Debenture.
- 1.2 In addition, in this Deed

"English Security Documents" means the Debenture and the Account Charge,

"Party" means a party to this Deed, and

"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 4.1 of the security which would otherwise be constituted by this Deed to be unlawful or prohibited by any applicable law or regulation, and (ii) any amounts payable (under the Guarantee, Restated Credit Agreement, Loan Documents or otherwise) on account of the obligations of a Domestic Loan Party

- 1.3 Notwithstanding the terms of this Deed, the provisions of the Debenture and the Guarantee shall continue to be in full force and effect
- 1.4 Neither Chargor shall be in breach of any obligations to deliver any title documents, share certificates or other documents of title to the Security Trustee under this Deed where such documents have already been delivered under the Debenture or are held by another party pursuant to the terms of the ABL Intercreditor Agreement
- 1.5 Where either Chargor has an obligation under the Debenture and an equivalent obligation under this Deed (including, for the avoidance of doubt, pursuant to clause 14.3 (*Inventory count*) of the Debenture) (an "Equivalent Obligation"), such Chargor shall only be obliged to perform or comply with the Equivalent Obligation under this Deed and shall not be in breach of the Debenture if it has complied with such Equivalent Obligation under this Deed
- 1.6 A notice given pursuant to this Deed shall be deemed to also constitute a notice given pursuant to the Debenture
- 1.7 Neither Obligor shall be in breach of any obligation under the Debenture to the extent such breach would arise solely from its entry into, or performance of its obligations under, this Deed

2 AMENDMENT OF DEBENTURE

Each Party agrees that as of the date of this Deed, the Debenture shall be amended by inserting the following in Recital (A) of the Debenture after the words "on or around the date of this Debenture":

"(as amended and restated on or around 15 April 2014)"

3 GUARANTEE AND SECURITY CONFIRMATION

3.1 Each Chargor hereby

- (a) acknowledges and accepts the terms of the Restated Credit Agreement,
- (b) agrees that it is bound by the terms of the Guarantee, and

- (c) agrees that its guarantee contained in the Guarantee continues in full force and effect and that all of those obligations and liabilities under the Restated Credit Agreement as are applicable to it, constitute Guaranteed Obligations (as that term is defined in the Credit Agreement)
- 3.2 Each Chargor hereby confirms and acknowledges that
 - (a) any Lien created by it under the English Security Documents to which it is a party extends to the Secured Obligations, and
 - (b) the Liens created under the English Security Documents to which it is a party continue in full force and effect in accordance with their respective terms
- 4 **CREATION OF FURTHER LIENS IN FAVOUR OF THE SECURITY TRUSTEE**
 - 4.1 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
 - 4.2 If the Chargors fail to pay or procure the payment of any amount payable by them under Clause 4.1 ~~Error! Reference source not found.~~ 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 Restated Credit Agreement) and shall be payable on demand provided that there shall be no double-counting of interest under this Clause 4.2 and clause 2.2 of the Debenture
 - 4.3 This Deed 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
 - 4.4 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 Deed will be a charge by way of 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 Deed 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 4.5);
- (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 4.5,

other than, in each case, any Excluded Property

4.5 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

4.6 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 4.4 or Clause 4.5. Schedule B1, Paragraph 14.1A shall apply to the floating charge contained in this Deed

4.7 The Liens created by each Chargor pursuant to this Clause 4 shall be separate and distinct from, and shall not merge with, the Liens created by each Chargor over the assets over which any relevant Liens were created pursuant to the Debenchur prior to the date hereof

5 **INCORPORATION**

Clauses 1.3 (*Construction*) to 1.6 (*ABI Intercreditor Agreement*), 4 (*Crystallisation of floating charge*) to 3.4 (*Conduct of business*) and 3.7 (*Limitation of Enforcement MPMG*) and the Schedules of the Debenture are deemed to be incorporated into this Deed *mutatis mutandis* as if they were set out in full in this Deed

6 **GOVERNING LAW**

This Deed 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

7 **JURISDICTION OF ENGLISH COURTS**

7.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "Dispute")

7.2 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

7.3 This Clause 7 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

8 **SERVICE OF PROCESS**

8.1 Without prejudice to any other mode of service allowed under any relevant law, MPMG

(a) 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 Deed, and

(b) agrees that a failure by the process agent to notify it of the process will not invalidate the proceedings concerned

8.2 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 Deed. 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

EXECUTION:

The parties have shown their acceptance of the terms of this Deed by executing it, in the case of each Chargor as a deed.

EXECUTION of the Supplemental Deed

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 JARA W. MACDONELL
(in capitals)

Witness's address

SIGNED as a deed by
MOMENTIVE PERFORMANCE
MATERIALS GMBH

Name George F. Knight
Title
Date

THE SECURITY TRUSTEE

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

EXECUTION of the Supplemental Deed:

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.)


HELEN MATHIE