



Registration of a Charge

Company name: **TECHNICAL FOAM HOLDINGS LIMITED**

Company number: **09915546**



X4MPBDA1

Received for Electronic Filing: **21/12/2015**

Details of Charge

Date of creation: **18/12/2015**

Charge code: **0991 5546 0001**

Persons entitled: **MR HAMER FRANCIS
MRS LINDA FRANCIS**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

**MATT THOMPSON FOR AND ON BEHALF OF HOWES PERCIVAL
LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9915546

Charge code: 0991 5546 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2015 and created by TECHNICAL FOAM HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2015 .

Given at Companies House, Cardiff on 22nd December 2015

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

I certify that save for material redacted pursuant to S. 859G of the Companies Act 2006 the electronic copy instrument delivered as part of this application for registration is a correct copy of the original document

THIS DEED is made the 15th day of December

2015

M. THOMPSON
FOR AND ON BEHALF OF
HOMES RECREAL LLP.

21/12/15

BETWEEN

(1) **TECHNICAL FOAM HOLDINGS LIMITED**, a company incorporated and registered in England and Wales with company number 09915546 whose registered office is at 57 Burkitt Road, Earlstrees Industrial Estate, Corby, Northamptonshire, NN17 4DT, United Kingdom (the "**Company**"); and

(2) Those persons listed below:

MR HAMER FRANCIS of 2 Chestnut Close, Milton Malsor, Northampton, NN7 3HJ; and

MRS LINDA FRANCIS of 2 Chestnut Close, Milton Malsor, Northampton, NN7 3HJ

(together the "**Exiting Sellers**").

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1 **Definitions**

The following definitions apply in this deed:

"Administrator" an administrator appointed to manage the affairs and business of the Company pursuant to clause 7.1

"Business Day" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business

"Equipment" all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Company, including any part of it and all spare parts, replacements, modifications and additions.

"Insurance Policy" each contract and policy of insurance effected or maintained by the Company from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

"Intellectual Property" the Company's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or

not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.

"Properties" all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Company, or in which the Company holds an interest, and Property means any of them.

"Receiver" a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Exiting Sellers under clause 7.2

"Secured Assets" all the assets and undertaking for the time being subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them)

"Secured Liabilities" all present and future monies, obligations and liabilities of the Company to the Exiting Sellers, under or in connection with the Share Purchase Agreement or this deed, together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities

"Security" any charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect

"Security Period" the period starting on the date of this deed and ending on the date on which the Exiting Sellers are satisfied (acting reasonably) that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are likely to be outstanding

"Share Purchase Agreement" the Share Purchase Agreement dated the same date as this deed between the Company, Technical Foam Services Limited, Duncan Geddes, April Geddes and the Exiting Sellers

1.2 Interpretation

In this deed:

1.2.1 clause headings shall not affect the interpretation of this deed;

1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives;

- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.6 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.7 a reference to **writing** or **written** includes fax but not e-mail;
- 1.2.8 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.9 unless the context otherwise requires, a reference to a clause is to a clause of, this deed;
- 1.2.10 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.11 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.12 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.13 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;

2. Clawback

- 2.1 If the Exiting Sellers consider (acting reasonably) that an amount paid by the Company in respect of the Secured Liabilities is likely to be avoided or otherwise set aside on the liquidation or administration of the Company or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

- 2.2 If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

3. Covenant to pay

The Company shall, on demand, pay to the Exiting Sellers and discharge the Secured Liabilities when they become due. The security constituted by this deed shall become immediately enforceable if and when demand has been made by the Exiting Sellers pursuant to this clause 3 and that demand is not satisfied in full following service of the demand.

4. Grant of security

4.1 Fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Exiting Sellers by way of first fixed charge:

- 4.1.1 all its present and future goodwill;
- 4.1.2 all its uncalled capital; and
- 4.1.3 all the Intellectual Property.

4.2 Floating charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Exiting Sellers, by way of first floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively charged pursuant to clause 4.1.

4.3 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 4.2

4.4 Automatic crystallisation of floating charge

The floating charge created by clause 4.2 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

- 4.4.1 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets;
 - 4.4.2 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Company;
 - 4.4.3 the Company is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986);
 - 4.4.4 the Company is in breach of any of the terms of this Debenture;
 - 4.4.5 the Company creates, or attempts to create, without the prior written consent of the Exiting Sellers (save in accordance with clause 10), a Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed);
 - 4.4.6 the Company disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- 4.5 The Exiting Sellers may in their sole discretion, by written notice to the Company, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Exiting Sellers in that notice if the Exiting Sellers (acting reasonably) consider those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

4.6 Assets acquired after any floating charge has crystallised

Any asset acquired by the Company after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Exiting Sellers confirms otherwise to the Company in writing) be charged to the Exiting Sellers by way of first fixed charge.

5. Liability of the Company

5.1 Liability Not Discharged

The Company's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Exiting Sellers that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

- 5.1.2 the Exiting Sellers renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 4.2, might have discharged, or otherwise prejudiced or affected, the liability of the Company.

5.2 **Immediate Recourse**

The Company waives any right it may have to require the Seller to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Company.

6. **Company's covenants**

6.1 The Company shall not:

- 6.1.1 (except for charges in favour of the Exiting Sellers created under or pursuant to this Debenture or in accordance with clause 10) create, attempt to create or permit to subsist any mortgage, charge or lien (other than a lien arising in the ordinary course of business by operation of law) on any of its undertaking or assets;
- 6.1.2 except as permitted by the Share Purchase Agreement or any document referred to in the Share Purchase Agreement sell, assign, transfer, part with possession, or otherwise dispose of its undertaking and other assets or any part of them, except that the Company may get in and realise in the ordinary and proper course of its business and for the purpose of its business its assets which are only subject to an uncrystallised floating charge to the Exiting Sellers (and for the purpose of this clause, unprecedented or exceptional transactions or any transaction that is in breach of any director's duty or that may be classified as a preference or transaction at an undervalue shall not be defined as being in the ordinary course of business); or
- 6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party (save in accordance with clause 10).

6.2 The Company shall:

- 6.2.1 keep the Secured Assets which are insurable insured with reputable insurance companies to such extent and against such risks as is normal for companies in businesses similar to that of the Company;
- 6.2.2 duly and promptly pay all premiums and other moneys necessary for maintaining the insurances required under clause 6.2.1;
- 6.2.3 keep the Secured Assets in good repair and working order (save in relation to fair wear and tear); and
- 6.2.4 promptly notify the Exiting Sellers of any meeting to discuss, or any proposal or application for the appointment of an administrator, receiver, liquidator or similar official in respect of the Company or any of the Secured Assets and, if any such official is appointed, of his appointment.

7. Enforcement

7.1 Appointment and removal of an Administrator

The Exiting Sellers may, on prior written notice to the Company, appoint any one or more persons to be an Administrator of the Company pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

Any appointment under this clause 7.1 shall:

- 7.1.1 be in writing signed by a duly authorised signatory of the Exiting Sellers; and
- 7.1.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

The Exiting Sellers may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.1 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

7.2 Appointment and removal of Receiver

- 7.2.1 At any time after the security constituted by this deed has become enforceable, or at the request of the Company, the Exiting Sellers may, on prior written notice to the Company, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

- 7.2.2 The Exiting Sellers may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

7.3 Remuneration of Receiver

The Exiting Sellers may fix the remuneration of any Receiver appointed by them and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

7.4 Powers of Receiver

A Receiver shall have power:

- 7.4.1 to take possession of, collect and get in all or any part of the Secured Assets and for that purpose to take any proceedings in the Company's name or otherwise as he shall think fit;
- 7.4.2 to carry on or concur in carrying on the Company's business and raise money from the Exiting Sellers or any others on the security of all or any part of the Secured Assets;
- 7.4.3 to take, continue or defend any proceedings and make any arrangement or compromise which the Exiting Sellers or he shall think fit;
- 7.4.4 to make and effect all repairs, improvements and insurances;
- 7.4.5 to appoint managers, officers and agents for any of the above purposes, at such salaries as the Receiver may determine;
- 7.4.6 to call up any of the Company's uncalled capital;
- 7.4.7 to promote the formation of a subsidiary company or companies of the Company, so that such subsidiary may purchase, lease, license or otherwise acquire interests in all or any part of the Secured Assets; and
- 7.4.8 to do all other acts and things which he may consider to be incidental or conducive to any of the above powers or otherwise incidental or conducive to the improvement or realisation of the Secured Assets.

8. Order of Application of proceeds

8.1 All monies received by the Exiting Sellers or Receiver pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights) be applied in the following order of priority:

8.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Exiting Sellers (and any Receiver, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;

8.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Exiting Sellers determine; and

8.1.3 in payment of the surplus (if any) to the Company or other person entitled to it.

9. Costs

The Company shall pay to, or reimburse, the Exiting Sellers and any Receiver all costs, charges, expenses, taxes and liabilities of any kind reasonably incurred by the Exiting Sellers or any Receiver in connection with this deed or the Secured Assets, taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Exiting Sellers' or Receiver's rights under this deed or bringing proceedings for, or recovering, any of the Secured Liabilities.

10. Further Lending

10.1 The Exiting Sellers acknowledge that the Company may, whilst the Secured Liabilities are still outstanding, require lending from an external third party lender to secure funding to pay all or part of the Secured Liabilities and/or for the development or continuation of its business. Should third party funding be required for the development or continuation of the Company's business, any further third party lending shall (unless consent has been provided by the Exiting Sellers) be limited to a sum which shall not exceed 50% of the value of the outstanding Secured Liabilities at such time as the further lending is required (and for the avoidance of doubt, such limitation shall not apply to the extent such further lending is required to repay all or part of the then outstanding Secured Liabilities). In order for a third party lender to provide such lending, the Exiting Sellers acknowledge that the third party lender will require security over the Secured Assets. Accordingly, the Company may request the Exiting Sellers to become subordinated creditors to any such third party lender and if the Exiting Sellers shall consent (such

consent not to be unreasonably withheld or delayed) then they shall become subordinated creditors and shall agree to subordinate the security created by this Deed on fair and reasonable terms by entering into an inter creditor agreement with the third party lender which grants priority to the third party lender's security (the "ICA"). In return, the Company agrees to use all reasonable endeavours to negotiate terms with the third party lender which are as fair and reasonable as possible to the Exiting Sellers.

- 10.2 If there is any dispute as to whether the Exiting Sellers have unreasonably withheld consent or delayed, or whether the proposed terms of the ICA are fair and reasonable, such terms shall be referred to the Company's auditors for an opinion. The parties agree (save for manifest error on behalf of the auditors) to abide by the decision of the auditors, who shall act as experts and who shall consider any written representations from the parties.

11. Power of attorney

- 11.1 By way of security, the Company appoints the Receiver to be the attorney of the Company and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that the Company is required to execute and do under this deed or any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed.
- 11.2 The Company ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to this clause.

12. Remedies, waivers, Amendments and consents

- 12.1 No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 12.2 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 12.3 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided

under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Exiting Sellers shall be effective unless it is in writing.

- 12.4 The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

13. Severance

- 13.1 If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

14. Counterparts

- 14.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- 14.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

15. Third party rights

- 15.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 15.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

16. Notices

- 16.1 Each notice or other communication required to be given to a party under or in connection with this deed shall be:

16.1.1 in writing;

16.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

16.1.3 sent the addresses specified above to any other address or fax number as is notified in writing by one party to the other from time to time.

16.2 Any notice or other communication shall be deemed to have been received:

16.2.1 if delivered by hand, at the time it is left at the relevant address;

16.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

16.2.3 if sent by fax, when received in legible form.

A notice or other communication given on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.4 A notice or other communication given under or in connection with this guarantee is not valid if sent by e-mail.

17. **Miscellaneous**

17.1 **Independent Security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Exiting Sellers may hold for any of the Secured Liabilities at any time. No prior security held by the Exiting Sellers over the whole or any part of the Secured Assets shall merge in the security created by this deed.

17.2 **Continuing Security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Exiting Sellers discharge this deed in writing.

17.3 **Discharge Conditional and Release**

- 17.3.1 Any release, discharge or settlement between the Company and the Exiting Sellers shall be deemed conditional on no payment or security received by the Exiting Sellers in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:
- (a) the Exiting Sellers or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Exiting Sellers deem necessary to provide the Exiting Sellers with security against any such avoidance, reduction or order for refund; and
 - (b) the Exiting Sellers may recover the value or amount of such security or payment from the Company subsequently as if the release, discharge or settlement had not occurred.
- 17.4 Upon payment of the full amount of the Secured Liability (but subject always to clause 17.3), the Company shall be released from:
- 17.4.1 all and any security created by the Company over its assets by or pursuant to the Share Purchase Agreement and this deed; and
 - 17.4.2 all covenants, liabilities and obligations by or pursuant to the Share Purchase Agreement and this deed.
- 17.5 On the expiry of the Security Period (but not otherwise), the Exiting Sellers shall take whatever action is necessary to release the Secured Assets from the security constituted by this deed.
- 17.6 **Certificates**
- A certificate or determination by the Exiting Sellers as to any amount for the time being due to it from the Company under this deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.
- 17.7 **Consolidation**
- The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

18. Governing law and jurisdiction

18.1 Governing law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

18.2 Jurisdiction

Each party irrevocably agrees that, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this Deed has been duly executed the day and year first above written.

EXECUTED as a DEED by)

TECHNICAL FOAM HOLDINGS LIMITED)

acting by a director)

in the presence of:)

Witness' signature: ..

Witness' name (in BLOCK CAPITALS): ..

Witness' address: ..

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SIGNED as a DEED by)

HAMER FRANCIS)

in the presence of:)

Witness' signature: ..

Witness' name (in BLOCK CAPITALS): ..

Witness' address: ..

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..

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SIGNED as a DEED by)

LINDA FRANCIS) .

in the presence of:)

Witness' signature: .

Witness' name (in BLOCK CAPITALS): .

Witness' address: .

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