



Registration of a Charge

Company Name: **THE BORDERS DISTILLERY COMPANY LIMITED**

Company Number: **SC445020**



Received for filing in Electronic Format on the: **23/02/2024**

XCXH2CZT

Details of Charge

Date of creation: **20/02/2024**

Charge code: **SC44 5020 0008**

Persons entitled: **FEROVINUM LTD**

Brief description:

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: **WE 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: **MORTON FRASER MACROBERTS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 445020

Charge code: SC44 5020 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 20th February 2024 and created by THE BORDERS DISTILLERY COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd February 2024 .

Given at Companies House, Edinburgh on 26th February 2024

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**

FLOATING CHARGE

by

THE BORDERS DISTILLERY
COMPANY LIMITED

(as Chargor)

in favour of

FEROVINUM LTD

(Ferovinum)

FLOATING CHARGE by:

- (1) **THE BORDERS DISTILLERY COMPANY LIMITED**, a company registered under the laws of Scotland with registered number SC445020 and having its registered office at The Borders Distillery, Commercial Road, Hawick, United Kingdom, TD9 7AQ (the "**Chargor**");

in favour of

- (2) **FEROVINUM LTD**, a company registered under the laws of England and Wales with registered number 11276611 and having its registered office at 46a Carnaby Street, Carnaby, London, England, W1F 9PS ("**Ferovinum**").

IT IS AGREED

1 Definitions and Interpretation

1.1 Definitions

In this deed, terms and expressions defined in the Master Agreement shall have the same meaning where used herein (unless otherwise defined herein), and:

"**Act**" means the Insolvency Act 1986.

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

"**Charged Assets**" means the whole of the property (including uncalled capital) which is or may be from time to time, while this deed is in force, comprised in the property and undertaking of the Chargor.

"**Default Interest Rate**" has the meaning given to that term in the Master Agreement.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by Ferovinum under, or in connection with, this deed or by statute.

"**Event of Default**" has the meaning given to that term in the Master Agreement.

"**Heritable Property**" means

- (a) any heritable, leasehold, freehold or immovable property which is comprised in the Charged Assets from time to time; and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such property.

"**Intellectual Property Rights**" means all present and future copyrights, patents, designs, trademarks, service marks, brand names, inventions, design rights, know how, formulas, confidential information, trade secrets, computer software programs, computer systems and all other intellectual property rights whatsoever without any limitation, whether registered or unregistered, in all or any part of the world, in which the Chargor is legally, beneficially or otherwise interested or entitled.

"**Master Agreement**" means the master agreement made between the Chargor and Ferovinum on or around the date of this deed in relation to the trading of wine and spirits between the Chargor and Ferovinum.

"**Protected Party**" means Ferovinum, any Delegate or any Receiver.

"Receiver" means any receiver or administrative receiver appointed in respect of the Charged Assets under this deed (whether by the Chargor or the Court) and this includes joint receivers.

"Secured Obligations" means all present and future obligations of the Chargor owed or expressed to be owed to Ferovinum whether actual or contingent and whether owed jointly, severally or alone, as principal or guarantor or in any other capacity whatsoever.

"Security" means a mortgage, charge (fixed or floating), standard security, pledge, hypothec, lien, assignment or assignation in security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Third Parties Act" means the Contract (Third Party Rights) (Scotland) Act 2017.

1.2 *Interpretation*

1.2.1 Any reference in this deed to:

- 1.2.1.1 **"this deed"** means these presents as amended, supplemented, novated, extended or restated from time to time;
- 1.2.1.2 a **"person"** includes reference to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;
- 1.2.1.3 the **"Chargor"**, **"Ferovinum"**, any **"Protected Party"** or any other person shall be construed to include its successors, permitted assignees and permitted transferees;
- 1.2.1.4 any document or instrument shall be construed as a reference to such document as varied, amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of the Chargor or provides for further advances);
- 1.2.1.5 **"disposal"** includes a sale, transfer, assignation, grant or creation of any interest derived out of all or any part of any property (including the grant of a lease), licence, declaration of trust or other disposal, whether voluntary or involuntary, and **"dispose"** will be construed accordingly;
- 1.2.1.6 a provision of law is a reference to that statute or statutory provision or other provision of law as amended, extended, consolidated, replaced or re-enacted from time to time;
- 1.2.1.7 the singular includes the plural and vice versa;
- 1.2.1.8 any reference to any gender includes all other genders; and

1.2.1.9 the table of contents and the clause headings in this deed are for ease of reference only.

1.2.2 If Ferovinum reasonably considers that an amount paid by the Chargor to Ferovinum is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

2 Undertaking to Pay

The Chargor undertakes to Ferovinum to pay, discharge and perform the Secured Obligations when the same become due for payment, discharge or performance together with interest at the Default Interest Rate on any amount which the Chargor fails to pay to Ferovinum on the due date.

3 Floating Charge

As a continuing security for the payment and discharge of the Secured Obligations, the Chargor hereby grants in favour of Ferovinum a floating charge over all and each part of the Charged Assets.

4 Negative Pledge and Ranking

Unless otherwise agreed in writing by Ferovinum and, subject to Section 464(2) of the Companies Act 1985:

- 4.1 the Chargor shall not create, grant, incur or permit to subsist any Security over the whole or any part of the Charged Assets ranking in priority to or equally with this deed after its execution of this deed except any fixed security in favour of Ferovinum; and
- 4.2 this Security shall rank in priority to any Security created by the Chargor after its execution of this deed except any fixed security in favour of Ferovinum.

5 Representations and Warranties

5.1 *Representations and Warranties*

The Chargor represents and warrants to Ferovinum on the date of this deed that:

- 5.1.1 it has the power and authority to grant this deed and to perform its obligations hereunder;
- 5.1.2 it has taken all necessary corporate action to authorise the execution and delivery of this deed and to authorise the performance of its obligations hereunder;
- 5.1.3 the obligations assumed by it in this deed are legal, valid, binding and enforceable obligations;
- 5.1.4 neither the granting of this deed by the Chargor nor the performance of its obligations hereunder will contravene any law or regulation or any agreement to which the Chargor is a party or by which it is bound nor will it cause any limitation of any of the powers of the Chargor however imposed or the right or ability of the directors to exercise any of such powers to be exceeded; and

- 5.1.5 all authorisations required for the entry into, performance, validity and enforceability of this deed by the Chargor and for the conduct of its business have been obtained and are in full force and effect.

5.2 *Repetition*

The representations and warranties in this clause 5 are deemed to be made by the Chargor by reference to the facts and circumstances then existing on the last Business Day of each calendar month.

6 **General Undertakings**

6.1 *Authorisations*

The Chargor shall promptly obtain, effect and comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to Ferovinum of, any Authorisation required under any law or regulation to enable it to own its assets and carry on its business as it is being conducted.

6.2 *No disposals*

Save as otherwise provided in the Master Agreement or unless otherwise agreed in writing by Ferovinum, the Chargor shall not sell, transfer, assign, factor, lease, license, assign or otherwise charge or dispose of any of the Charged Assets or any interest in them other than in the ordinary course of trading for market value, on an arms length basis and for consideration payable on normal commercial terms.

6.3 *Maintenance of Charged Assets*

The Chargor shall keep the Charged Assets in good and substantial repair and in good working order and condition, wear and tear excepted and, where necessary, renew and replace them and shall not cause or permit to be done anything which may in any way depreciates, jeopardises or otherwise prejudices the value or marketability of the Charged Assets to a material extent.

6.4 *Compliance with laws*

The Chargor shall comply in all respects with all laws, statutes, directives and regulations and all notices, codes of practice and other requirements having the force of law which are applicable to it.

6.5 *Insurance*

The Chargor shall, unless otherwise agreed under the Master Agreement, ensure that:

- 6.5.1 all the Charged Assets that are insurable are insured with reputable insurance companies or underwriters to such extent and against such risks as is normal for prudent companies in businesses similar to those of the Chargor;
- 6.5.2 all premiums and other sums due and payable under all such insurances are paid and up to date and produce the relevant receipts or any other evidence of payment promptly upon request to do so by Ferovinum;
- 6.5.3 at the request of Ferovinum, the interest of Ferovinum is noted on the policies in respect of such insurances or that such policies contain such

other provisions for protection of Ferovinum as Ferovinum may from time to time require;

6.5.4 all terms and conditions applicable to such insurances are complied with at all times; and

6.5.5 apply all monies received under any such insurances towards replacing, restoring or reinstating the property destroyed or damaged or making good the loss or damage otherwise sustained.

6.6 *Notification of diligence or insolvency proceedings*

The Chargor shall notify Ferovinum immediately:

6.6.1 if any creditor executes diligence against the Chargor (whether effectual or not) or any distress or execution is levied or enforced against the Chargor or any of the Charged Assets or any third party debt order or freezing order is made and served on the Chargor or any of the Charged Assets; or

6.6.2 if any steps (including the making of an application or the giving of notice) are taken by any person (including the Chargor) in relation to the administration, receivership, winding-up or dissolution of the Chargor.

6.7 *Business*

The Chargor shall conduct its business and affairs in a proper and efficient manner and provide Ferovinum on request with such trading, financial and other information as Ferovinum may reasonably require from time to time.

6.8 *Intellectual Property Rights*

The Chargor shall not:

6.8.1 take or knowingly fail to take any action which does or might reasonably be expected to adversely affect any registration of the Intellectual Property Rights; or

6.8.2 abandon or cancel or authorise any third party to do any act which would or might invalidate or jeopardise or be inconsistent with the Intellectual Property Rights and not omit or authorise any third party to omit to do any act which by its omission would have that effect or character.

6.9 *Failure to comply*

6.9.1 The Chargor must promptly notify Ferovinum of any breach of any of the representations or undertakings specified in this deed.

6.9.2 If the Chargor fails to comply with any of its obligations and undertakings under this deed Ferovinum may (and is hereby irrevocably authorised to) take such action (at the cost of the Chargor) as Ferovinum considers

appropriate or desirable to ensure or procure compliance with such obligations.

7 Enforcement of Security

7.1 *Security enforceable*

The security constituted by or pursuant to this deed shall become enforceable immediately upon, or at any time after:

- 7.1.1 the occurrence of an Event of Default;
- 7.1.2 the Chargor requesting the appointment of a Receiver or administrator in respect of the Chargor;
- 7.1.3 an administration application being made in respect of the Chargor; and/or
- 7.1.4 any person gives a notice of intention to appoint an administrator in respect of the Chargor.

7.2 *Appointment of Receiver or administrator*

7.2.1 At any time after this deed has become enforceable or, if requested to do so by the Chargor, Ferovinum shall be entitled to:

- 7.2.1.1 appoint one or more persons as a Receiver or Receivers in respect of the Charged Assets, or apply to the Court for such appointment;
- 7.2.1.2 appoint one or more persons as an administrator or administrators of the Chargor;
- 7.2.1.3 make an administration application in respect of the Chargor; and/or
- 7.2.1.4 give notice of intention to appoint an administrator or administrators of the Chargor.

7.2.2 The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by Ferovinum by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, Ferovinum shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

7.2.3 The floating charge created by this deed is a qualifying floating charge and Paragraph 14 of Schedule B1 to the Act shall apply to it.

7.2.4 The Chargor agrees in relation to the appointment of any Receiver or Receivers that:

- 7.2.4.1 each Receiver will be entitled to proper and reasonable remuneration for all the work carried out by him/her and his/her firm in their role as Receiver on the basis of

charging from time to time adopted by the Receiver their firm;

- 7.2.4.2 each Receiver so appointed will be the agent of the Chargor for all purposes of and in all respects arising under this deed, and except as otherwise provided by the Act, the Chargor alone shall be solely responsible for the acts, deeds, omissions, neglects and defaults of each Receiver, for liabilities and obligations incurred by him/her and for his/her remuneration, costs, charges and expenses;
- 7.2.4.3 Ferovinum will not have any responsibility for the acts, omissions or defaults or for the liabilities, remuneration or expenses of the Receiver;
- 7.2.4.4 any Receiver appointed under this deed will have, and be entitled to exercise, all powers conferred upon a Receiver by the Act under this deed and by operation of law; and/or
- 7.2.4.5 Ferovinum and any such Receiver may retain and pay all sums relating to any such actions, proceedings, costs, claims or demands out of any money recovered under the powers conferred by the Companies Acts 2006, the Act or this deed.

7.3 *Powers of Receiver*

Any Receiver appointed under this deed shall have the following powers in addition to those specified in Schedule 2 to the Act:

- 7.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), to transfer any part of the Charged Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Chargor, or the Receiver, or its or his/her nominee or trustee;
- 7.3.2 subject to the articles of association of the Chargor, to convene extraordinary general meetings of the Chargor;
- 7.3.3 generally, without prejudice to the other provisions of this clause 7.3, to exercise all the rights, powers and discretions in respect of the Charged Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Charged Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- 7.3.4 in respect of any of the Charged Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law

on receivers or receivers and managers (or analogous officers) in that jurisdiction.

7.4 *Protected Parties' discretion*

Each Protected Party may exercise all or any of the powers referred to in this deed in such manner and to such extent as that Protected Party considers appropriate (in its sole discretion) and in particular shall not be under any duty to maximise the proceeds arising from the Charged Assets.

7.5 *Exclusion of liability*

No Protected Party shall be liable:

7.5.1 to account to the Chargor except in respect of the actual receipts of the relevant Protected Party; and

7.5.2 to the Chargor for any loss or damage arising from the exercise by the relevant Protected Party of all or any of the powers conferred by or pursuant to this deed except in the case of gross negligence or wilful default on the part of such Protected Party.

8 **Reimbursement and Indemnity**

The Chargor shall promptly indemnify each Protected Party against any cost, loss or liability incurred by any of them:

8.1 as a result of:

8.1.1 the taking, holding, perfecting, protection or enforcement of the security constituted by this deed;

8.1.2 the exercise of any of the rights, powers, discretions and remedies vested in any Protected Party by this deed or by law; or

8.1.3 any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this deed; or

8.2 which otherwise relates to any of the Charged Assets or the performance of the terms of this deed.

9 **Application of Proceeds**

9.1 *Order of application*

Subject to clause 9.2 (*Prospective liabilities*), the claims of creditors ranking in priority to or *pari passu* with the claims of Ferovinum under this deed, and the terms of Section 60 of the Act, all amounts from time to time received or recovered by Ferovinum or otherwise arising in connection with the realisation or enforcement of all or any part of the security constituted by this deed (for the purposes of this clause 9, the "**Recoveries**") shall be applied by Ferovinum (in its discretion) as it sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause 9), in the following order:

9.1.1 in or towards payment or satisfaction of all costs and expenses incurred by any Protected Party in connection with the realisation or enforcement

of this deed and of all outgoings payable by any Protected Party in connection with this deed;

- 9.1.2 in payment of remuneration to any Receiver;
- 9.1.3 in or towards payment or satisfaction of the remaining Secured Obligations in full in such manner and order of application as Ferovinum deems fit; and
- 9.1.4 the balance (if any) will be paid to the Chargor or any other person entitled thereto or as required by law.

9.2 *Prospective liabilities*

Ferovinum may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of Ferovinum with such financial institution and for so long as Ferovinum shall think fit (the interest being credited to the relevant account) for later application under clause 9.1 (*Order of Application*) in respect of:

- 9.2.1 any sum owing to any Protected Party; and
- 9.2.2 any part of the Secured Obligations,

that Ferovinum reasonably considers, in each case, might become due or owing at any time in the future.

9.3 *Currency conversion and indemnity*

- 9.3.1 For the purpose of, or pending the payment, discharge or performance of any of the Secured Obligations, Ferovinum may convert any moneys received or recovered by Ferovinum from one currency to the currency in which the Secured Obligations are denominated at a market rate of exchange.
- 9.3.2 The obligations of the Chargor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.
- 9.3.3 As a separate and independent obligation, the Chargor hereby indemnifies and holds harmless Ferovinum against any shortfall between any amount received or recovered by Ferovinum in respect of any payment due under this deed and converted in accordance with this clause 9.3 into the currency in which such amount was payable and the amount in such currency which was due and payable to Ferovinum under this deed.

10 **Protection of Persons dealing with Protected Parties**

No purchaser from or other person dealing with any Protected Party in relation to the Charged Assets (or any part thereof) will be concerned to enquire:

- 10.1 whether any event has happened upon which any of the powers conferred by this deed may have arisen or be exercisable;
- 10.2 otherwise as to the propriety or validity of any exercise of the rights or powers conferred by this deed or of any act purporting or intended to be in exercise of such *rights or powers; or*
- 10.3 whether any Secured Obligations remain outstanding.

11 **Further Assurance**

The Chargor shall promptly after being requested to do so by any Protected Party, at its own expense, take whatever action (including payment of all stamp duties and other registration fees) the Protected Party may require for:

- 11.1 perfecting or protecting the security created or intended to be created by or pursuant to this deed in respect of any Charged Assets or the ranking of such security; and
- 11.2 facilitating the realisation of any Charged Assets or the exercise of any right, power or discretion exercisable by any Protected Party in respect of any Charged Assets created under or pursuant to this deed, including the execution of any transfer, conveyance, assignation or other documents relative to the Charged Assets whether to any Protected Party, its nominees, delegates or otherwise, and the giving of any notice, order or direction and the making of any registration and filing.

12 **Power of Attorney**

12.1 *Power of attorney*

The Chargor hereby irrevocably appoints each of Ferrovinum, any person selected by Ferrovinum and any Receiver to be the attorney of the Chargor and in the Chargor's name and on its behalf or otherwise to sign, seal, execute, deliver, complete and do all such documents and things as may be, or as Ferrovinum or any Receiver may consider to be, requisite or desirable for:

- 12.1.1 carrying out any obligations imposed on the Chargor under this deed including to execute such further securities, transfers or assignations of, and other documents relating to, the Charged Assets or any assets or rights purported to be charged by this deed;
- 12.1.2 getting in the Charged Assets and carrying out any sale or other dealing by Ferrovinum, any person selected by Ferrovinum or any Receiver into effect; and
- 12.1.3 generally enabling Ferrovinum, any person selected by Ferrovinum or any Receiver to exercise the rights, powers and discretions conferred on it by or pursuant to this deed.

12.2 *Ratification*

The Chargor hereby ratifies and confirms and undertakes to ratify and confirm all things done and documents executed by any attorney in the exercise or purported exercise of the power of attorney created by this clause 12.

12.3 *When power of attorney becomes exercisable*

The power of attorney referred to in this clause 12 shall be effective immediately but shall only be exercisable following the occurrence of an Event of Default.

13 **Costs and Expenses**

The Chargor shall within five Business Days of demand:

- 13.1 pay to Ferovinum the amount of all reasonable costs and expenses (including legal fees) properly incurred by Ferovinum (or any Delegate) in connection with this deed or any amendment hereto and including in relation to the preservation or enforcement of rights arising from any actual or alleged breach by any person of any law or regulation; and
- 13.2 keep Ferovinum indemnified against any failure or delay in paying those costs or expenses.

14 **Protection of Security**

14.1 *Continuing security*

This deed is a continuing security and extends to the balance from time to time of the Secured Obligations irrespective of any intermediate payment of the Secured Obligations and shall remain in force as such until discharged by Ferovinum in writing.

14.2 *No waiver*

No failure or delay on the part of any Protected Party in exercising any of the rights, powers or remedies under or pursuant to this deed or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof.

14.3 *Waiver of defences*

The obligations of the Chargor under this deed and the rights, powers and discretions of each Protected Party under this deed and the security hereby constituted shall not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing which, but for this clause 14.4, might operate to impair, affect or discharge or otherwise reduce such obligations, rights, powers, discretions or security, in whole or in part and whether or not known to or discoverable by the Chargor, any Protected Party, or any other person, including any of the following:

- 14.3.1 any time or other indulgence granted in respect of any of the Secured Obligations;
- 14.3.2 any increase in or waiver or discharge of any of the Secured Obligations or any amendment or termination of any agreement relating to the Secured Obligations;
- 14.3.3 Ferovinum abstaining from perfecting or enforcing, or giving up or waiving any other security, guarantee or other right or remedy for all or any of the Secured Obligations; or
- 14.3.4 any legal limitation, disability, incapacity or other circumstance relating to, or any invalidity, unenforceability or frustration of any of the obligations of, any debtor in respect of the Secured Obligations.

14.4 *Chargor intent*

Without prejudice to the generality of clause 14.4 (*Waiver of defences*), the Chargor expressly confirms that it intends that the security created by this deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Secured Obligations for the purposes of or in connection with any

of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making available acceptance credit facilities, note purchase facilities, guarantee, stand-by or documentary credit issuance facilities; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; any hedging agreement entered into by the Chargor with any hedge counterparty in connection with any such facility; and any fees, costs and/or expenses associated with any of the foregoing.

15 **Assignment and Transfers**

15.1 *Ferovinum*

Ferovinum may at any time (without notice or consent) assign or transfer the benefit of this deed or any of its rights or obligations hereunder to any person.

15.2 *Chargor*

The Chargor may not assign, transfer or otherwise deal with the benefit or burden of this deed or all or any of its rights or obligations under this deed.

16 **Notices**

16.1 Any communication to a party made under or in connection with this deed shall be made in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.

16.2 The address and email address of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

in the case of Chargor:

Address: The Borders Distillery, Commercial Road, Hawick, United Kingdom, TD9 7AQ

Email: john@thebordersdistillery.com

Attention: John Fordyce

in the case of Ferovinum:

Address: 46a Carnaby Street, Carnaby, London, England, W1F 9PS

Email: legal@ferovinum.com and

Attention: Mitchel Fowler and Daniel Gibney

or any substitute address or email address as may be notified in writing to each Party by not less than 7 days' notice.

16.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will be effective only:

16.3.1 if by way of email, when received in legible form; or

16.3.2 if by way of letter, when it has been left at the relevant address or by 5 days after being deposited in the post postage prepaid in an envelope to it at that address.

and, if a particular department or officer is specified as part of its address details provided under clause 16.2, if addressed to that department or officer.

- 16.4 This clause 16 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.

17 **Notice of Security or other interest in Charged Assets**

If Ferovinum receives notice that the Chargor has granted any Security over, or has otherwise assigned, charged or otherwise disposed of any interest in the Charged Assets or any of them or has attempted to do so, Ferovinum shall be entitled to rule off its account for the Chargor and open new accounts in its books. If, despite being entitled to do so, Ferovinum does not open a new account or accounts, it shall nevertheless be deemed to have done so at the time Ferovinum received such notice and as from that time all payments made by the Chargor to Ferovinum shall, in the absence of any express appropriation by Ferovinum, be treated as having been accredited to such new account(s).

18 **Set-off**

Without limiting any other rights conferred on Ferovinum by law or by any other agreements entered into with the Chargor, Ferovinum may (but shall not be obliged to) set-off any matured obligation due from the Chargor against any obligation (whether matured or not) owed by Ferovinum to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, Ferovinum may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If the obligation owed by Ferovinum is unliquidated or unascertained, Ferovinum may set-off in an amount estimated by it in good faith to be the amount of that obligation.

19 **Miscellaneous**

19.1 *No deduction or withholding*

All sums payable by the Chargor under this deed shall be paid to Ferovinum or any Protected Party in full and without set-off, deduction or counterclaim whatsoever. If a deduction or withholding is required by law to be made by the Chargor on any such payment then the Chargor shall gross-up that payment so that the full amount thereof is received by the relevant Protected Party.

19.2 *Certificates binding*

A certificate, determination, notice or opinion of Ferovinum as to any amount payable under this deed will be conclusive, except in the case of manifest or demonstrable error.

19.3 *Third party rights*

- 19.3.1 Unless expressly provided to the contrary, a person who is not a party to this deed has no right under the Third Parties Act to enforce or to enjoy the benefit of any term of this deed.
- 19.3.2 Notwithstanding any term of this deed, the consent of any person other than the Chargor and Ferovinum is not required to rescind or vary this deed at any time.
- 19.3.3 A Protected Party may, subject to this clause 19.3 and the Third Parties Act, rely on any provision of this deed which expressly confers rights on it.

20 **Governing Law, Jurisdiction and Enforcement**

20.1 *Governing law*

This deed, and any non-contractual obligations arising out of or in connection with this deed, shall be governed by Scots law.

20.2 *Jurisdiction of Scottish Courts*

- 20.2.1 The Scottish Courts 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 and a dispute regarding a non-contractual obligation referred to in clause 20.1 (*Governing law*) (a "**Dispute**").
- 20.2.2 Ferovinum and the Chargor agree that the Scottish Courts are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 20.2.3 This clause 20.2 is for the benefit of Ferovinum only. As a result, Ferovinum shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent permitted by law, Ferovinum may take concurrent proceedings in any number of jurisdictions.

20.3 *Registration*

The Chargor consents to the registration of this deed, and any certificate referred to in clause 19.2 (*Certificates binding*), for preservation and execution provided that no summary diligence shall be executed against the Chargor or in respect of the Charged Assets unless the security created by this deed has become enforceable in accordance with clause 7.1 (*Security enforceable*).

IN WITNESS WHEREOF this deed consisting of this and the preceding 14 pages is executed as follows:

The Chargor

SUBSCRIBED for and on behalf of
The Borders Distillery Company Limited by

H. S. HUNGIN
Name of director


Signature of director

in the presence of this witness:

...Witness Signature

MAXWELL NOBLE... Witness Name

...Address

together at London on 16 February 2024 but not delivered
until 20 February 2024