



**Registration of a Charge**

Company name: **DS SMITH CORRUGATED PACKAGING LIMITED**

Company number: **00053913**



X4LYYD9E

Received for Electronic Filing: **10/12/2015**

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**Details of Charge**

Date of creation: **08/12/2015**

Charge code: **0005 3913 0012**

Persons entitled: **BNP PARIBAS FACTOR**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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: **BNP PARIBAS LONDON BRANCH**



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

Company number: 53913

Charge code: 0005 3913 0012

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th December 2015 and created by DS SMITH CORRUGATED PACKAGING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th December 2015 .

Given at Companies House, Cardiff on 11th 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

**DATED**

08/12/2015

**MORTGAGE OVER BANK ACCOUNTS**

**between**

**DS SMITH CORRUGATED PACKAGING LTD**

**and**

**BNP PARIBAS FACTOR**

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**THIS DEED** (this "Charge") is dated

**PARTIES**

- (1) **DS SMITH CORRUGATED PACKAGING LTD**, a private limited company incorporated and registered in England and Wales with company number -00053913 whose registered office is located at 350 Euston Road - London - United Kingdom - NW1 3AX, United Kingdom as mortgagor (the "Mortgagor").
- (2) **BNP PARIBAS FACTOR**, a French limited company (*société anonyme*), registered under number B 775 675 069 on the Nanterre Trade and Companies Register, and whose registered office is located at 46-52 Rue Arago, 92823 Puteaux, France, as mortgagee (the "Mortgagee").

**BACKGROUND**

- (A) Pursuant to the Factoring Documents, the Mortgagee has agreed to purchase from the Mortgagor certain monies owed to the Mortgagor, and the Mortgagee and the Mortgagor have agreed that the Mortgagor will act as the Mortgagee's agent in collecting in such monies and that all such proceeds should be paid into an Account and then remitted from such Account to the Mortgagee.
- (B) This Charge provides security which the Mortgagor has agreed to give the Mortgagee for all of its obligations under the Factoring Documents and this Charge.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The definitions and rules of interpretation in this Clause apply in this Charge.

**Accounts:** each of the following account(s) in the name of the Mortgagor held with the Account Bank, as any such account may be renumbered or redesignated from time to time, and all rights of the Mortgagor in relation to each such account:


**Account Bank:** BNP Paribas London Branch, located at 10 Harewood Avenue, London NW1 6AA, United Kingdom and which is registered in England and Wales as a branch of a foreign company under number FC13447.

**Balances:** all monies from time to time standing to the credit of each of the Accounts, together with all other rights and benefits accruing to or arising in connection with each of the Accounts (including, but not limited to, entitlements to interest).

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**Business Day:** in relation to a particular country, a day (other than a Saturday or Sunday) on which banks are open for general business in the principal financial centre of that country.

**Corporate Mandate:** the account mandate in favour of the Account Bank relating to the opening of the Accounts, as approved and adopted at a meeting of the Board of Directors of the Mortgagor held on 05 November 2015 of which a copy has been provided to the Mortgagee.

**Costs:** all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on Costs.

**Encumbrance:** any mortgage, 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.

**Factoring Agreement:** the factoring agreement dated 05 November 2015 between the Mortgagor and the Mortgagee, pursuant to which the Mortgagee has agreed to purchase from the Mortgagor certain monies owed to the Mortgagor.

**Factoring Documents:** means the Factoring Agreement and any and all other agreement, documents, notices, powers of attorney or otherwise entered into by any party in connection with the Factoring Agreement.

**Financial Collateral:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Financial Collateral regulations:** the Financial Collateral Arrangements (No. 2) Regulations 2003 (*SI 2003/3226*).

**Receiver:** a receiver of any or all of the Balances appointed under paragraph 5 of Schedule 4.

**Secured Liabilities:** all present and future monies, obligations and liabilities owed by the Mortgagor to the Mortgagee, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever, under or in connection with the Factoring Documents or this Charge (including, without limitation, those arising under Clause 11.3(b)) or under any other related agreement entered into from time to time between the Mortgagor and the Mortgagee, together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities.

**Security Financial Collateral Arrangement:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Security Period:** the period starting on the date of this Charge and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

## 1.2 Interpretation

Unless the context otherwise requires, in this Charge:

- (a) a reference to a statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute

or statutory provision which it consolidated or re-enacted before the date of this Charge;

- (b) a reference to one gender includes a reference to the other gender;
- (c) words in the singular include the plural and in the plural include the singular;
- (d) a reference to a Clause or Schedule is to a clause of, or schedule to, this Charge and references to paragraphs are to paragraphs of the relevant Schedule;
- (e) a reference to **this Charge** (or any specified provision of it) or any other document shall be construed as a reference to this Charge, that provision or that document as in force for the time being and as amended or novated from time to time;
- (f) a reference to a **person** shall include a reference to an individual, firm, corporation, unincorporated body of persons, or any state or any agency of a person;
- (g) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (h) a reference to an **authorisation** includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- (i) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- (j) Clause, Schedule and paragraph headings shall not affect the interpretation of this Charge.

### 1.3 **Clawback**

If the Mortgagee acting reasonably considers that an amount paid by the Mortgagor in respect of the Secured Liabilities is likely to be avoided or otherwise set aside on the liquidation or administration of the Mortgagor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Charge.

### 1.4 **Third party rights**

A third party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this Charge.

### 1.5 **Perpetuity period**

The perpetuity period applicable to all trusts declared by this Charge shall be 80 years.

### 1.6 **Schedules**

The Schedules form part of this Charge and shall have effect as if set out in full in the body of this Charge. Any reference to this Charge includes the Schedules.



**2. COVENANT TO PAY**

The Mortgagor shall, on demand, pay to the Mortgagee and discharge the Secured Liabilities when they become due.

**3. GRANT OF SECURITY**

**3.1 Charging clause**

As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee charges to the Mortgagee, by way of first fixed charge, all of the Mortgagor's present and future right, title and interest in and to each of the Balances.

**4. LIABILITY OF THE MORTGAGOR**

**4.1 Liability not discharged**

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Mortgagee that is or becomes wholly or partially illegal, void or unenforceable on any ground; or
- (b) the Mortgagee renewing, determining or varying any of the Factoring Documents, or 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
- (c) any other act or omission, which but for this Clause 4.1 might have discharged, or otherwise prejudiced or affected, the liability of the Mortgagor.

**4.2 Immediate recourse**

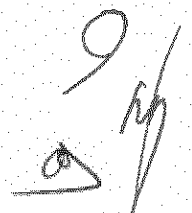
The Mortgagor waives any right it may have to require the Mortgagee to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Charge against the Mortgagor.

**5. REPRESENTATIONS AND WARRANTIES**

The Mortgagor represents and warrants to the Mortgagee in the terms set out in Schedule 1. The representations and warranties set out in Schedule 1 are made on the date of this Charge and shall be deemed to be made on each day of the Security Period with reference to the facts and circumstances then existing.

**6. COVENANTS**

The Mortgagor covenants with the Mortgagee in the terms set out in Schedule 2.

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**7. POWERS OF THE MORTGAGEE**

The Mortgagee shall have the powers set out in Schedule 3.

**8. ENFORCEMENT**

**8.1 Enforcement**

The security constituted by this Charge shall be immediately enforceable in any of the circumstances set out in paragraph 1 of Schedule 4. The parties to this Charge agree that the provisions of Schedule 4 shall apply to this Charge and shall be binding between them.

**8.2 Power of sale**

At any time after this Charge has become enforceable, the Mortgagee and any Receiver may (without prejudice to any other right which the Mortgagee or the Receiver may have) without further notice to the Mortgagor exercise the power to sell or otherwise dispose of the whole or any part of any of the Balances.

**8.3 Terms of sale**

Any sale or disposal under Clause 8.2 may be made in such manner, on such terms and for such consideration (whether payable immediately or by instalments) as the Mortgagee or the Receiver, as the case may be, shall in its absolute discretion think fit and without liability for loss.

**8.4 Costs**

The Mortgagor shall pay to, or reimburse, the Mortgagee and any Receiver on demand, on a full indemnity basis, all Costs properly and reasonably incurred by the Mortgagee and/or any Receiver in relation to:

- (a) this Charge or the Balances;
- (b) protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Mortgagee's or the Receiver's rights under this Charge;
- (c) suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this Charge or the Secured Liabilities), together with interest on any amount due under this Clause at such default rate as may from time to time be agreed between the Mortgagee and the Mortgagor or, in the absence of such agreement, as may be determined by a court of competent jurisdiction.

**8.5 Indemnity**

The Mortgagee and any Receiver, and their respective employees and agents, shall (save in respect of actions, liabilities or Costs incurred or suffered as a result of their wilful neglect or fraud) be indemnified on a full indemnity basis out of the Balances in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

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- (a) the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this Charge;
- (b) any matter or thing done, or omitted to be done, in relation to the Balances under those powers; or
- (c) any default or delay by the Mortgagor in performing any of its obligations under this Charge.

#### **8.6 Right of appropriation**

To the extent that the Balances constitute Financial Collateral and that this Charge and the obligations of the Mortgagor hereunder constitute a Security Financial Collateral Arrangement, the Mortgagee shall have the right, at any time after this Charge has become enforceable, to appropriate all or any of that part of any of the Balances in or towards the payment and/or discharge of the Secured Liabilities in such order as the Mortgagee in its absolute discretion may from time to time determine. The value of the Balances appropriated in accordance with this Clause shall be, in the case of cash, the amount of cash appropriated. The Mortgagor agrees that the method of valuation provided for in this Clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

#### **9. RELEASE**

Subject to Clause 11.3, on the expiry of the Security Period (but not otherwise), the Mortgagee shall, at the request and cost of the Mortgagor, take whatever action is necessary to release the Balances from the security constituted by this Charge.

#### **10. ASSIGNMENT AND TRANSFER**

##### **10.1 Assignment by Mortgagee**

At any time, without the consent of the Mortgagor, the Mortgagee may assign or transfer the whole or any part of the Mortgagee's rights and/or obligations under this Charge to any person.


##### **10.2 Assignment by Mortgagor**

The Mortgagor may not assign any of its rights, or transfer any of its obligations, under this Charge or enter into any transaction which would result in any of those rights or obligations passing to another person.

#### **11. FURTHER PROVISIONS**

##### **11.1 Independent security**

This Charge shall be in addition to, and independent of, every other security or guarantee which the Mortgagee may hold for any of the Secured Liabilities at any time. No prior security held by the Mortgagee over the whole or any part of the Balances shall merge in the security created by this Charge.



## **11.2 Continuing security**

This Charge 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 Mortgagee discharges this Charge in writing.

## **11.3 Discharge conditional**

Any release, discharge or settlement between the Mortgagor and the Mortgagee shall be deemed conditional on no payment or security received by the Mortgagee 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. Until all pending transaction are settled and all amount due under the Factoring Agreement is paid to the Mortgagee, despite any such release, discharge or settlement:

- (a) the Mortgagee or its nominee may retain this Charge and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Balances, for such period as the Mortgagee deems necessary to provide the Mortgagee with security against any such avoidance, reduction or order for refund; and
- (b) the Mortgagee may recover the value or amount of such security or payment from the Mortgagor subsequently as if such release, discharge or settlement had not occurred.

## **11.4 Certificates**

A certificate or determination by the Mortgagee as to any amount for the time being due to it from the Mortgagor shall (in the absence of any manifest error) be prima facie evidence of the amount due.

## **11.5 Rights cumulative**

The rights and powers of the Mortgagee conferred by this Charge are cumulative, may be exercised as often as the Mortgagee considers appropriate, and are in addition to its rights and powers under the general law.

## **11.6 Waivers**

Any waiver or variation of any right by the Mortgagee (whether arising under this Charge or under the general law) shall only be effective if it is in writing and signed by the Mortgagee and applies only in the circumstances for which it was given, and shall not prevent the Mortgagee from subsequently relying on the relevant provision.

## **11.7 Further exercise of rights**

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No act or course of conduct or negotiation by or on behalf of the Mortgagee shall, in any way, preclude the Mortgagee from exercising any right or power under this Charge or constitute a suspension or variation of any such right or power.

**11.8 Delay**

No delay or failure to exercise any right or power under this Charge shall operate as a waiver.

**11.9 Single or partial exercise**

No single or partial exercise of any right under this Charge shall prevent any other or further exercise of that or any other right.

**11.10 Consolidation**

The restriction on the right of consolidation contained in section 93 of the Law of Property Act 1925 shall not apply to this Charge.

**11.11 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Charge under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

**11.12 Counterparts**

This Charge may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

**12. NOTICES**

**12.1 Service**

Any notice or other communication given under this Charge shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class or pre-paid air mail post or by fax to the address or fax number, and marked for the attention, of the relevant party as set out in Schedule 6, or such other address or fax number as may be notified in writing from time to time by the relevant party to the other party.

**12.2 Receipt**

Any notice given under Clause 12.1 shall be deemed to be received:

- (a) if delivered personally, at the time of delivery; or

- (b) in the case of pre-paid first-class post to an address in the same country as the country in which such notice is posted, 48 hours after the time of posting; or
- (c) in the case of pre-paid air mail post to an address in a different country from the country in which such notice is posted, 7 days after the time of posting; or
- (d) in the case of a fax, when received in legible form.

#### **12.3 Deemed receipt**

If deemed receipt under Clause 12.2 occurs:

- (a) before 9:00 am on a Business Day in the country in which the notice is received, the notice shall be deemed to have been received at 9:00 am on that day; or
- (b) after 5:00 pm on a Business Day in the country in which the notice is received, or on a day that is not a Business Day in that country, the notice shall be deemed to have been received at 9:00 am on the next Business Day in that country.

#### **12.4 Proof of service**

In proving service of a notice delivered personally or by pre-paid first-class post or by pre-paid air mail post, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party as set out in Schedule 6 (or as otherwise notified by that party under Clause 12.1) and delivered either:

- (a) to that address in the case of notice delivered personally; or
- (b) into the custody of the postal authorities as a pre-paid first-class letter or (as the case may be) a pre-paid air mail letter in the case of notice delivered by post.

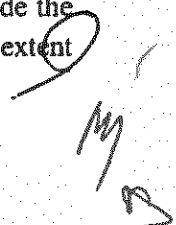
### **13. GOVERNING LAW AND JURISDICTION**

#### **13.1 Governing law**

This Charge and any dispute arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England and Wales.

#### **13.2 Jurisdiction**

The parties to this Charge irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising out of or in connection with this Charge. Nothing in this Clause 13.2 shall limit the right of the Mortgagee to take proceedings against the Mortgagor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.



**13.3 Other service**

The Mortgagor irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Charge being served on it in accordance with the provisions of this Charge relating to the service of notices. Nothing contained in this Charge shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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## **Schedule 1 Representations and warranties**

### **1. OWNERSHIP OF BALANCES**

The Mortgagor is the legal and beneficial owner of the Balances, subject to its obligations to the Mortgagee under the Factoring Documents and this Charge.

### **2. NO ENCUMBRANCES**

The Balances are free from any Encumbrance other than the Encumbrances created by this Charge.

### **3. ADVERSE CLAIMS**

The Mortgagor has not received or (save in respect of the Mortgagee's interest) acknowledged notice of any adverse claim by any person in respect of the Balances or any interest in it.

### **4. ADVERSE COVENANTS**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially adversely affect the Balances.

### **5. NO BREACH OF LAWS**

There is no breach of any law or regulation which materially adversely affects the Balances.

### **6. AVOIDANCE OF SECURITY**

No Encumbrance expressed to be created under this Charge is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Mortgagor or otherwise.

### **7. NO PROHIBITIONS OR BREACHES**

The entry into of this Charge by the Mortgagor does not and will not constitute a breach of any agreement or instrument binding on the Mortgagor or its assets.





## **Schedule 2 Covenants**

### **1. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

The Mortgagor shall not at any time, except with the prior written consent of the Mortgagee (other than pursuant to this Charge):

- (a) create, purport to create or permit to subsist any Encumbrance on, or in relation to, the Balances; or
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Balances; or
- (c) create or grant (or purport to create or grant) any interest in the Balances in favour of a third party.

### **2. PRESERVATION OF BALANCES**

Except as expressly permitted by the Mortgagee in accordance with the terms of the Factoring Documents and the Corporate Mandate, the Mortgagor shall not withdraw or transfer all or any part of the Balances and shall not do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Mortgagee or materially diminish the value of the Balances or the effectiveness of the security created by this Charge (including, without limitation, closing any of the Accounts).

### **3. CORPORATE MANDATE**

Except as expressly permitted by the Mortgagee in accordance with the terms of the Factoring Documents, the Mortgagor shall not revoke, terminate, vary or amend in any way the terms of the Corporate Mandate, including in particular (but not limited to) paragraph 3(b) of the Corporate Mandate which provides that all monies from time to time standing to the credit of each of the Accounts shall be transferred on a daily basis to such bank account or bank accounts in the name of the Mortgagee as shall be nominated by the Mortgagee.

### **4. ENFORCEMENT OF RIGHTS**

The Mortgagor shall use all reasonable endeavours to:

- (a) procure the prompt observance and performance by the counterparty to any agreement or arrangement with the Mortgagor relating to the Balances; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to the Balances which the Mortgagee may require from time to time.

### **5. NOTICE OF BREACHES**

The Mortgagor shall promptly on becoming aware of any of the same give the Mortgagee notice in writing of any breach of:

- (a) any representation or warranty set out in Schedule 1; and
- (b) any covenant set out in this Schedule 2.

**6. NOTICE TO BE GIVEN BY THE MORTGAGOR**

The Mortgagor shall immediately on the execution of this Charge give notice to the Account Bank of the charge created under Clause 3 over the Balances and procure that the Account Bank contemporaneously provides an acknowledgement of the Mortgagee's interest in the Balances to the Mortgagee. Such notice and acknowledgement shall be substantially in the form of Schedule 5.

**7. FURTHER ASSURANCE**

The Mortgagor, at the Mortgagee's cost, shall prepare and execute such further legal or other mortgages, charges or transfers (containing a power of sale and such other provisions as the Mortgagee may reasonably require) in favour of the Mortgagee as the Mortgagee reasonably requires from time to time over all or any part of the Balances and give all notices, orders and directions which the Mortgagee may reasonably require for perfecting, protecting or facilitating the realisation of its security over the Balances.

**8. MORTGAGOR'S WAIVER OF SET-OFF**

The Mortgagor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Mortgagor under this Charge).



### **Schedule 3 Powers of the Mortgagee**

#### **9. POWER TO REMEDY**

The Mortgagee shall be entitled (but shall not be bound) to remedy a breach at any time by the Mortgagor of any of its obligations contained in this Charge and the Mortgagor irrevocably authorises the Mortgagee and its agents to do all such things as are necessary or desirable for that purpose.

#### **10. EXERCISE OF RIGHTS**

The rights of the Mortgagee under paragraph 1 of this Schedule 3 are without prejudice to any other rights of the Mortgagee under this Charge. The exercise of those rights shall not make the Mortgagee liable to account as a mortgagee in possession.

#### **11. PRIOR ENCUMBRANCES**

At any time after the security constituted by this Charge has become enforceable, or after any powers conferred by any Encumbrance having priority to this Charge shall have become exercisable, the Mortgagee may:

- (a) redeem such or any other prior Encumbrance, or procure its transfer to itself; and
- (b) settle any account of the holder of any prior Encumbrance.

The settlement of any such account shall be conclusive and binding on the Mortgagor. All monies paid by the Mortgagee to an encumbrancer in settlement of such an account shall, as from its payment by the Mortgagee, be due from the Mortgagor to the Mortgagee on current account and shall bear interest at such default rate as may from time to time be agreed between the Mortgagee and the Mortgagor in the Factoring Documents or, in the absence of such agreement, as may be determined by the Mortgagee, and shall be secured as part of the Secured Liabilities.

#### **12. CONVERSION OF CURRENCY**

For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Mortgagee may convert any monies received, recovered or realised by the Mortgagee under this Charge (including the proceeds of any previous conversion under this paragraph 4) from their existing currencies of denomination into such other currencies of denomination as the Mortgagee may think fit. Any such conversion shall be effected at the Account Bank's then prevailing spot selling rate of exchange for such other currency against the existing currency. Each reference in this paragraph 4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **13. NEW ACCOUNTS**

- 13.1 If the Mortgagee receives notice of any subsequent Encumbrance, or other interest, affecting all or part of the Balances, the Mortgagee may open a new account for the Mortgagor in the



Mortgagee's books. Without prejudice to the Mortgagee's right to combine accounts, no money paid to the credit of the Mortgagor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- 13.2 If the Mortgagee does not open a new account immediately on receipt of notice under paragraph 5.1 of this Schedule 3, then, unless the Mortgagee gives express written notice to the contrary to the Mortgagor, all payments made by the Mortgagor to the Mortgagee shall be treated as having been credited to a new account of the Mortgagor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Mortgagee.

**14. MORTGAGEE'S SET-OFF RIGHTS**

If the Mortgagee has more than one account for the Mortgagor in its books, the Mortgagee may at any time after:

- (a) the security constituted by this Charge has become enforceable; or
- (b) the Mortgagee has received notice of any subsequent Encumbrance or other interest affecting all or any part of the Balances,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit (but the Mortgagee shall notify the Mortgagor of the transfer once made).

**15. INDULGENCE**

The Mortgagee may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person or persons not being a party to this Charge (whether or not such person or persons is jointly liable with the Mortgagor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Charge or to the liability of the Mortgagor for the Secured Liabilities.

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## Schedule 4 Enforcement

### 16. ENFORCEMENT EVENTS

This Charge shall be enforceable if:

- (a) any of the Secured Liabilities are not paid or discharged when the same ought to be paid or discharged by the Mortgagor (whether on demand, at scheduled maturity, or by acceleration or otherwise, as the case may be); or
- (b) the Mortgagor is in breach of any of its obligations under this Charge, or under any of the Factoring Documents (subject to any applicable grace, cure or remedy periods); or
- (c) the Mortgagor:
  - (i) becomes unable to pay its debts as they fall due (and/or the value of the Mortgagor's assets is less than the amount of its liabilities, taking into account the Mortgagor's contingent and prospective liabilities); or
  - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
  - (iii) makes a general assignment for the benefit of, or a composition with, its creditors; or
- (d) the Mortgagor passes any resolution or takes any corporate action, or a petition is presented or proceedings are commenced, or any action is taken by any person for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues or assets; or
- (e) a distress, execution, attachment or other legal process in an amount in excess of £[.....] is levied, or enforced on or sued against all or any part of the assets of the Mortgagor and remains undischarged for seven days; or
- (f) any event occurs in relation to the Mortgagor that is analogous to those set out in paragraph 1(c), paragraph 1(d) or paragraph 1(e) of this Schedule 4; or
- (g) any representation, warranty or statement made or deemed to be made by the Mortgagor under this Charge is or proves to have been incorrect or misleading in a material respect when made or deemed to be made;

and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Mortgagee, the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Mortgagee may, in its absolute discretion, enforce all or any part of the security created by this Charge as it sees fit.

### 17. POWER OF SALE

The power of sale under this Charge (including any statutory power of sale) shall, as between the Mortgagee and a purchaser from the Mortgagee, arise on and be exercisable at any time after the execution of this Charge, but the Mortgagee shall not exercise such power of sale

until the security constituted by this Charge has become enforceable under paragraph 1 of this Schedule 4.

**18. PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the Mortgagee or any Receiver shall be concerned:

- (a) to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the Mortgagee or a Receiver is purporting to exercise has become exercisable; or
- (b) to see to the application of any money paid to the Mortgagee or any Receiver.

**19. NO LIABILITY AS MORTGAGEE IN POSSESSION**

Neither the Mortgagee nor any Receiver shall be liable to account as mortgagee in possession in respect of the Balances, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, the Balances for which a mortgagee in possession might be liable as such.

**20. APPOINTMENT OF RECEIVER**

20.1 At any time after the security constituted by this Charge has become enforceable, or at the request of the Mortgagor, the Mortgagee may, without further notice:

- (a) appoint under seal or by writing under hand of a duly authorised officer of the Mortgagee, any one or more person or persons to be a receiver of all or any part of the Balances; and
- (b) from time to time under seal or in writing under hand of a duly authorised officer of the Mortgagee, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Mortgagee specifies to the contrary).

20.2 The Mortgagee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this Charge which shall be due and payable immediately upon its being paid by the Mortgagee.

**21. POWER OF SALE ADDITIONAL**

21.1 The powers of sale and appointing a Receiver conferred by this Charge shall be in addition to all statutory and other powers of the Mortgagee under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise, and shall be exercisable without the restrictions contained in Sections 103 and 109 of the Law of Property Act 1925 or otherwise.

- 21.2 The power to appoint a Receiver (whether conferred by this Charge or by statute) shall be, and remain, exercisable by the Mortgagee despite any prior appointment in respect of all or any part of the Balances.

**22. AGENT OF THE MORTGAGOR**

Any Receiver appointed by the Mortgagee under this Charge shall be the agent of the Mortgagor and the Mortgagor shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him.

**23. POWERS OF RECEIVER**

Any Receiver appointed by the Mortgagee under this Charge shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have the power to do all such acts and things as an absolute owner could do in the management of the Balances.

**24. ORDER OF APPLICATION OF PROCEEDS**

All monies received by the Mortgagee or a Receiver in the exercise of any enforcement powers conferred by this Charge shall be applied:

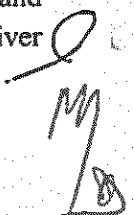
- (a) first in paying all unpaid fees, costs and other liability incurred by or on behalf of the Mortgagee (and any Receiver, attorney or agent appointed by it);
- (b) second in paying the remuneration of any Receiver (as agreed between the Receiver and the Mortgagee);
- (c) third in or towards discharge of the Secured Liabilities in such order and manner as the Mortgagee determines; and
- (d) finally in paying any surplus to the Mortgagor or any other person entitled to it.

**25. APPROPRIATION**

Neither the Mortgagee nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

**26. SUSPENSE ACCOUNT**

All monies received by the Mortgagee or a Receiver under this Charge may, at the discretion of the Mortgagee or Receiver, be credited to any suspense or securities realised account and shall bear interest at such rate, if any, as may be agreed in writing between the Mortgagee and the Mortgagor, and may be held in such account for so long as the Mortgagee or Receiver thinks fit.



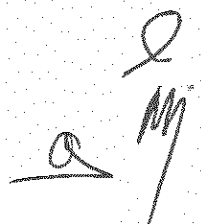
**27. POWER OF ATTORNEY**

By way of security, the Mortgagor irrevocably appoints the Mortgagee and every Receiver separately to be the attorney of the Mortgagor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which:

- (a) the Mortgagor is required to execute and do under this Charge, including execute any document required by the Mortgagee under paragraph 7 of Schedule 2; and/or
- (b) any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this Charge or by law on the Mortgagee or any Receiver.

**28. RATIFICATION OF ACTS OF ATTORNEY**

The Mortgagor ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 12 of this Schedule 4.

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**Schedule 5 Form of Notice to, and Acknowledgment from, Account Bank**

To: BNP Paribas London Branch  
10 Harewood Avenue  
London NW1 6AA  
United Kingdom

Attention: .....

08/12/2015

Dear Sirs,

1. We, **DS SMITH CORRUGATED PACKAGING LTD**, (the "Mortgagor"), and we, BNP Paribas Factor (the "Mortgagee"), together hereby give notice that, by a Mortgage over Bank Accounts dated 08/12/2015 (the "Charge") between the Mortgagor and the Mortgagee, the Mortgagor has charged to the Mortgagee by way of first fixed charge all of the Mortgagor's present and future right, title and interest in and to all monies from time to time standing to the credit of each of the accounts held with you in the Mortgagor's name that are listed below (the "Accounts") (as any such account may be renumbered or redesignated from time to time), together with all other rights and benefits accruing to or arising in connection with each of the Accounts (including, but not limited to, entitlements to interest):

(
(


2. We enclose a copy of the Charge with this Notice of Charge. Terms defined in the Charge shall have the same meaning when used in this Notice of Charge unless the context requires otherwise.
3. Subject to paragraphs 4 and 5 below, and except as expressly permitted by the Mortgagee in accordance with the terms of the Charge and the Corporate Mandate, the only operations that may (at any time prior to the service by the Mortgagee of a notice on you in accordance with paragraph 4 of this Notice of Charge below) be effected in relation to any of the Accounts are as follows:-
- (a) the crediting to any of the Accounts of (i) any payments received in respect of debts owed to the Mortgagor which are the object of the Factoring Agreement and (ii) any accrued interest payable in relation to any of the Accounts;

*[Handwritten signature]*

- (b) (in accordance with paragraph 3(b) of the Corporate Mandate) the transfer on a daily basis of all monies from time to time standing to the credit of each of the Accounts to such bank account or bank accounts in the name of the Mortgagee as shall be nominated by the Mortgagee (and all monies so transferred shall be released from the first fixed charge created by the Charge upon each such transfer being made); and

4. Following receipt by you of notice from the Mortgagee stating that the Charge has become enforceable:

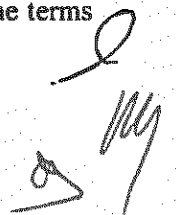
- (a) all rights, powers and discretions of the Mortgagor in relation to each of the Accounts shall be exercisable solely by the Mortgagee;
- (b) no moneys may be released from any of the Accounts without the prior written consent of the Mortgagee; and
- (c) you should apply any amount standing to the credit of any Account as directed from time to time by the Mortgagee.

5. By your execution of the acknowledgement to this Notice of Charge:

- (a) you agree:
  - (i) to disclose to the Mortgagee such information relating to each of the Accounts as the Mortgagee may from time to time request;
  - (ii) not to claim or exercise any security interest in, set-off, counterclaim or other rights in respect of any of the Accounts; and
  - (iii) that the terms of the Corporate Mandate may not be revoked, terminated, varied or amended in any way without the prior written consent of the Mortgagee, including in particular (but not limited to) paragraph 3(b) of the Corporate Mandate which provides that all monies from time to time standing to the credit of each of the Accounts shall be transferred on a daily basis to such bank account in the name of the Mortgagee as shall be nominated by the Mortgagee;

and

- (b) you confirm:
  - (i) that you have received this Notice of Charge and the enclosed copy of the Charge, and that you are aware of the terms of the Charge, and that you agree to ensure that each of the Accounts is operated in compliance with the terms of the Charge; and

Handwritten signatures in the bottom right corner of the document.

- (ii) that you are not aware that any Encumbrance exists on, or in relation to, the Balances other than the Charge, or that any third party has any interest in the Balances.

6. The authorities and instructions contained in this Notice of Charge are irrevocable without the prior written consent of the Mortgagee.
7. The agreement arising from this Notice of Charge and your execution of the acknowledgement to this Notice of Charge, and any dispute arising out of or in connection therewith, shall be governed by and construed in accordance with the laws of England and Wales, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

Please acknowledge your receipt of this Notice of Charge and of the enclosed copy of the Charge, and confirm that you will pay all moneys as directed by or pursuant to this Notice of Charge and that you will comply with the other provisions of this Notice of Charge, by executing the acknowledgment to this Notice of Charge on the attached copy and by then returning that copy to the Mortgagee at BNP Paribas Factor, 46-52 Rue Arago, 92823 Puteaux, France, marked for the attention of Stephanie Surmely.

For and on behalf of

BNP PARIBAS FACTOR  
SA au capital de EUR 5 718 272  
APE 64 99 Z  
Le Metropole - 46 52 rue Arago  
92823 PUTEAUX cedex  
RCS Nanterre 381 808 088

For and on behalf of

DS SMITH CORRUGATED PACKAGING LTD  
as Mortgagor

*[Handwritten signature]*

We acknowledge receipt of the Notice of Charge of which this is a copy and hereby confirm our acknowledgement and confirmation of, and our agreement to, all of the matters referred to therein.

This acknowledgment is executed as a deed for and on behalf of BNP Paribas London Branch and is delivered and takes effect on 08/12/2015

Executed as a deed for and on behalf of  
**BNP PARIBAS LONDON BRANCH**  
acting by  
and by

)  
)  
)  
)  
)  
)  
)  
)  
)  
)



Authorised signatory



Authorised signatory



**Schedule 6 Notice details**

**The Mortgagor:**

**DS SMITH CORRUGATED PACKAGING  
LTD**

**350 Euston Road - London - United Kingdom  
- NW1 3AX**

**United Kingdom**

**For the attention of: \_\_\_\_\_**

**Fax number: \_\_\_\_\_**

**The Mortgagee:**

**BNP PARIBAS FACTOR**

**46-52 Rue Arago**

**92823 Puteaux**

**France**

**For the attention of: Stephanie Surmely,  
Head of Cash Management Department**

**Fax number: \_\_\_\_\_**

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of letters and a flourish.

Executed as a deed for and on behalf of )  
**DS SMITH CORRUGATED PACKAGING LTD** )  
acting by two of its Directors / one of its )  
Directors and its Company Secretary )

) 

\_\_\_\_\_  
(Director)

  
\_\_\_\_\_  
(Director/Secretary)



and by

ACS NANTERRE 775 675 069

**Authorised signatory**

