



**Registration of a Charge**

Company name: **C. & J. CLARK INTERNATIONAL LIMITED**

Company number: **00141015**



XA30WR1C

Received for Electronic Filing: **23/04/2021**

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**Details of Charge**

Date of creation: **20/04/2021**

Charge code: **0014 1015 0006**

Persons entitled: **LUCID TRUSTEE SERVICES LIMITED (AND ITS SUCCESSORS IN TITLE AND PERMITTED TRANSFEREES)**

Brief description:

**Contains fixed charge(s).**

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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: **LINKLATERS LLP**



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

Company number: 141015

Charge code: 0014 1015 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th April 2021 and created by C. & J. CLARK INTERNATIONAL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd April 2021 .

Given at Companies House, Cardiff on 26th April 2021

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**

## DUTCH BANK ACCOUNT PLEDGE

Dated 20 April 2021

Clarks Shoes Vertriebs GmbH

C. & J. Clark International Limited

C&J Clark Canada Limited

as the Pledgors  
and

Lucid Trustee Services Limited

as the Pledgee

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**THIS DEED** is dated 20 April 2021 and made between:

- (1) CLARKS SHOES VERTRIEBS GMBH, a private company with limited liability (*Gesellschaft mit beschränkter Haftung*) under the laws of the Federal Republic of Germany, and registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Stuttgart under registration no. HRB 734166, with business address at Albstraße 16-18, 72764 Reutlingen ("**Pledgor 1**");
- (2) C. & J. CLARK INTERNATIONAL LIMITED, a company incorporated under the laws of England and Wales with registration number 00141015 and its registered office at 40 High Street, Street, Somerset, BA16 0EQ, United Kingdom ("**Pledgor 2**");
- (3) C&J CLARK CANADA LIMITED, a company existing under the laws of Ontario, Canada with registration number 000430568 and with registered office and place of business at 2881 Brighton Road, Oakville, Ontario, Canada L6H 6C9 ("**Pledgor 3**", together with Pledgor 1 and Pledgor 2, the "**Pledgors**" and each a "**Pledgor**"); and
- (4) LUCID TRUSTEE SERVICES LIMITED (the "**Pledgee**").

## **Background**

Under the Intercreditor Agreement the Pledgee is appointed as Security Agent and is granted, as creditor of the Parallel Debt, its own independent claim in respect of the payment obligations of the Debtors to the Secured Parties. The Pledgee enters into this Deed in its own name and not as representative of the Secured Parties and the Pledgee becomes the sole pledgee under this Deed.

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Deed:

**"Account Bank Security"** means any Security that may have been created in favour of an Account Bank pursuant to the Cash Pool Agreement or under articles 24 and 25 of the general banking conditions of that Account Bank.

**"Account Banks"** means the banks with which the Bank Accounts are held.

**"Bank Accounts"** means all present and future bank accounts held by the Pledgors from time to time in the Netherlands.

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open for general business in the Netherlands or Germany.

**"Cash Pool Agreement"** means the cash pool agreement dated 22 January 2015 as amended from time to time between the Pledgors and Bank Mendes Gans N.V.

**"Civil Code"** means the Dutch Civil Code (*Burgerlijk Wetboek*).

**"Delegate"** means a delegate or sub-delegate appointed under Clause 8 (*Delegation*).

**"Enforcement Event"** has the meaning given to that term in the Intercreditor Agreement.

**"Intercreditor Agreement"** the security trust deed originally dated 27 February 2017 as amended and restated pursuant to an amendment and restatement agreement dated 19 February 2021, between, among others, the Pledgors as debtor and intra-group lender, the Previous Company, C&J Clark (No 1) Limited as company, certain financial institutions listed therein as Senior Lenders and/or Senior Secured Noteholders, the Credit Facility Agent and the Pledgee as Security Agent..

**"Notice"** means a notice (*mededeling*) substantially in the form set out in Schedule 2 (*Form of Account Bank Notice*) or such other form as agreed between the Pledgors and the Pledgee from time to time.

**"Parallel Debt"** has the meaning attributed thereto in the Intercreditor Agreement.

**"Pledge"** means any and all of the rights of pledge (*pandrechten*) created or expressed to be created in favour of the Pledgee by or pursuant to this Deed.

**"Receivables"** means, in respect of a Pledgor, all of that Pledgor's present and future receivables under or in connection with the Bank Accounts, including claims for balances now or in the future standing to the credit of such accounts and claims for accrued and future interest.

**"Secured Liabilities"** means all present and future debts, claims, liabilities and obligations due, owing or incurred by any Pledgor or any Debtor to the Pledgee for the payment of an amount under its Parallel Debt.

**"Security Assets"** means the assets which from time to time are, or expressed to be, the subject of the Pledge or any part of those assets.

## 1.2 **Incorporation of defined terms**

Unless a contrary indication appears, terms defined in the Intercreditor Agreement have the same meaning in this Deed.

## 1.3 **Construction**

- (a) Any reference in this Deed to a **"Debt Document"** or any other agreement or instrument is a reference to that Debt Document or other agreement or instrument as amended, novated, supplemented, extended or restated.
- (b) A reference to this **"Deed"** shall include, where relevant, any additional deed executed pursuant to this Deed.
- (c) A reference to **"the Netherlands"** or **"Dutch"** is to the European part of the Netherlands only.
- (d) The provisions in Clause 1.2 (Construction) of the Intercreditor Agreement apply to this Deed, except that references to the Intercreditor Agreement shall be construed as references to this Deed.

## 1.4 **Intercreditor Agreement controls**

The rights of pledge granted to the Pledgee pursuant to this Deed, the provisions of this Deed and the exercise of any right of remedy by the Pledgee hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Deed (other than Clauses 2 (*Security and perfection*), 7 (*Enforcement*) and

19 (*Governing law and jurisdiction*)), the terms of the Intercreditor Agreement shall govern and control, subject to mandatory provisions of Dutch law.

## 2. **SECURITY AND PERFECTION**

### 2.1 **First ranking security**

Each Pledgor agrees with the Pledgee to create in favour of the Pledgee, as security for the payment of all Secured Liabilities, a first ranking right of pledge (*pandrecht*) over all its Receivables, subject only to any Account Bank Security that may exist. To the extent that the right of pledge is not able to be ranking as such, it shall, without prejudice to all other rights and claims of the Pledgee, have the highest possible ranking.

### 2.2 **Creation and acceptance**

- (a) Each Pledgor, as security for the payment of all Secured Liabilities, creates in favour of the Pledgee a right of pledge (*pandrecht*) over all its Receivables.
- (b) The Pledge is created as a disclosed pledge (*openbaar pandrecht*) over all Receivables pursuant to or in connection with the Bank Accounts set out in Schedule 1 (*Asset information*).
- (c) Where a Receivable is not yet capable of being pledged, the Pledge over that Receivable will be created only when, and to the extent that, that Receivable becomes capable of being pledged.
- (d) The Pledgee accepts the Pledge, to the extent necessary in advance.

### 2.3 **Perfection**

The Pledgors shall within five (5) Business Days of this Deed send a Notice to the Account Bank listed in Schedule 1 (*Asset information*), with a copy to the Pledgee. Each Pledgor shall use all reasonable (but commercially prudent) endeavours to ensure that each such Account Bank countersigns and returns a copy of the relevant Notice within twenty (20) Business Days after sending the Notice. Each Pledgor shall promptly send a copy of any countersigned Notice to the Pledgee.

## 3. **FURTHER ASSURANCE**

- (a) Subject to the Agreed Security Principles, each Pledgor shall promptly do all such acts or execute all such documents (including any additional deeds of pledge in the form of this Deed, notices or instructions and executing this Deed in notarial form) as the Pledgee may reasonably specify (and in such form as the Pledgee may reasonably require):
  - (i) to perfect the Pledge or for the exercise of any rights, powers and remedies of the Pledgee provided by or pursuant to this Deed or by law and to enable the Pledgee to invoke it against any Account Bank, any counterparty and any other person; or
  - (ii) to confer on the Pledgee or confer on the Secured Parties Security over any property and assets of each Pledgor located in any jurisdiction equivalent or similar to the Pledge; and/or

- (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Pledge.
- (b) Subject to the Agreed Security Principles, each Pledgor shall take all such action as is available to it (including making all filings and registrations, giving notices and executing any additional deeds of pledge in the form of this Deed) as may be necessary for the purpose of the creation, perfection, protection or maintenance of the Pledge.

#### **4. BANK ACCOUNTS**

##### **4.1 Necessary consents**

The Pledgor shall ensure that each of its Bank Accounts is and remains capable of being pledged.

##### **4.2 Additional Bank Accounts**

Each Pledgor may only open new Bank Accounts with (new) Account Banks on the condition that they will be subject to the Pledge (for which purpose that Pledgor shall take such action as the Pledgee may require) and that the relevant new Account Bank is promptly after the opening of the new Bank Account notified of the Pledge by way of a Notice and requested to waive any Account Bank Security which it may have. Clause 2.3 (*Perfection*) shall apply mutatis mutandis. The relevant Pledgor shall promptly notify the Security Agent of any new Bank Accounts opened under this clause 4.2.

##### **4.3 Withdrawals**

- (a) Subject to paragraph (b) below, each Pledgor is authorised to make any withdrawal from any Bank Account in the normal course of its business or as otherwise not specifically prohibited by the Debt Documents.
- (b) Following an Enforcement Event which is continuing, the Pledgee may revoke by written notice to the relevant Pledgor and the Account Bank, the authorisation granted under paragraph (a) above and, to the exclusion of that Pledgor, exercise any and all rights granted by Dutch law to a pledgee of a pledge that has been notified to the debtor of a pledged receivable. Following an Enforcement Event which is continuing but prior to the revocations referred to in this paragraph (b), a Pledgor may only make withdrawals from any Bank Account with the prior consent of the Pledgee.

#### **5. GENERAL UNDERTAKINGS**

##### **5.1 Information**

Each Pledgor shall supply to the Pledgee promptly such information regarding its Security Assets and its compliance with this Deed, and deliver promptly to the Pledgee all documents relating to the Security Assets, as the Pledgee may reasonably request.

##### **5.2 No other prejudicial conduct**

No Pledgor shall do, or permit to be done, anything which could prejudice the Pledge or the rights of the Pledgee, other than as permitted by the Debt Documents.



### 5.3 Notification

Each Pledgor shall:

- (a) promptly notify any person that attaches (*beslag leggen*) any Security Asset or makes any claim in respect of any Security Asset (or attempts or expresses an intention to do so), as well as any liquidator (*curator*), administrator (*bewindvoerder*) or restructuring expert (*herstructureringsdeskundige*) of the Pledge (and, in the case of an oral notification, confirm it in writing); and
- (b) promptly notify the Pledgee in writing of any attempted or intended attachment or request for bankruptcy (*faillissement*), suspension of payment (*surseance van betaling*) or pre-insolvency scheme (*akkoordprocedure*), whether or not preliminary granted.

## 6. REPRESENTATIONS AND WARRANTIES

6.1 Each Pledgor makes the Repeating Representations (as defined in each of the Credit Facility Agreement and the Senior Secured Note Purchase Agreement), the representations set out in clause 21.8 (No filing or stamp taxes) of the Credit Facility Agreement and section 5.12 (No filing or stamp taxes) of the Senior Secured Note Purchase Agreement and the representations and warranties set out in this Clause 6, in each case to the Pledgee on the date of this Deed.

6.2 Each Pledgor represents and warrants that:

- (a) it is authorised (*bevoegd*) to pledge the Security Assets to the Pledgee;
- (b) no Security exists on or over the Security Assets except for (i) the Pledge, (ii) any Account Bank Security, (iii) any Security that is part of the Group's cash management arrangements or (iv) as permitted by the Credit Facility Agreement and Senior Secured Note Purchase Agreement; and
- (c) the Bank Accounts listed in Schedule 1 (*Asset information*) respectively are all the Bank Accounts that currently exist.

### 6.3 Repetition

Subject to Clause 7.3 (*Limitation*) below, the representations and warranties set out in paragraphs (a) and (b) of Clause 6.2 are deemed to be made by reference to the facts and circumstances then existing in respect of the Receivables then being pledged on the date of each Notice being given.

## 7. ENFORCEMENT

### 7.1 Default

Failure to satisfy a Secured Liability when it falls due shall constitute a default (*verzuim*) within the meaning of article 3:248(1) of the Civil Code in the performance thereof without any further reminder (*sommatie*) or notice of default (*ingebrekestelling*) being required.

## 7.2 When enforceable

The Pledge shall be immediately enforceable on and at any time after the occurrence of an Enforcement Event which is continuing, provided that there is a default (*verzuim*) in the performance of any of the Secured Liabilities within the meaning of article 3:248(1) of the Civil Code.

## 7.3 Limitation

- (a) For the purpose of this Clause 7.3:

**"Net Assets"** means an amount equal to the sum of the amounts of Pledgor 1's assets (consisting of all assets which correspond to the items set forth in section 266 para 2 A, B, C, D and E of the German Commercial Code (*Handelsgesetzbuch*, "**HGB**")) less the aggregate amount of Pledgor 1's liabilities (consisting of all liabilities and liability reserves which correspond to the items set forth in section 266 para 3 B, C, D and E HGB), save that any obligations (*Verbindlichkeiten*) of Pledgor 1 (i) owing to any member of the group or any other affiliated company which are subordinated by law or by contract to any indebtedness outstanding under the Debt Documents (including, for the avoidance of doubt, obligations that would in an insolvency be subordinated pursuant to section 39 para 1 no 5 or section 39 para 2 of the German Insolvency Code (*Insolvenzordnung*)) and including obligations which are so subordinated unless a waiver of the repayment claim of the relevant group member granting such loan, the contribution of such repayment claim in the capital reserves of Pledgor 1 and any other way of extinguishing the loan (e.g. by assignment to the borrower under that loan) would violate mandatory legal restrictions applicable to the relevant group member or (ii) incurred in violation of any of the provisions of the Debt Documents shall be disregarded.

The Net Assets shall be determined in accordance with the generally accepted accounting principles applicable from time to time in Germany (*Grundsätze ordnungsmäßiger Buchführung*) and be based on the same principles that were applied by Pledgor 1 in the preparation of its most recent annual balance sheet (*Jahresbilanz*).

**"Protected Capital"** means in relation to Pledgor 1 the aggregate amount of:

- (A) its share capital (*Stammkapital*) as registered in the commercial register (*Handelsregister*); provided that any increase registered after the date of this Deed shall not be taken into account unless (i) such increase has been effected as permitted under this Deed or any other Debt Document and (ii) only to the extent it is fully paid up; and
- (B) its amount of profits (*Gewinne*) or reserves (*Rücklagen*) which are not available for distribution to its shareholder(s) in accordance with section 253 para 6 HGB, 268 para 8 HGB or section 272 para 5 HGB, as applicable.

**"Up-stream and/or Cross-stream Security"** means the Pledge if and to the extent it secures the obligations of an Obligor which is a (direct or indirect) shareholder of Pledgor 1 or an affiliated company (*verbundenes Unternehmen*) of such shareholder within the meaning of section 16, 17 or 18 of the German Stock Corporation Act (*Aktiengesetz*) (other than Pledgor 1 and its

subsidiaries), provided that it shall not constitute an Up-stream or Cross-stream Security if and to the extent the Pledge secures amounts outstanding under any Debt Document in relation to any financial accommodation made available under such Debt Document to any Borrower and on-lent or otherwise passed on to, or issued for the benefit of, Pledgor 1 or any of its subsidiaries and outstanding at the time of the enforcement of the Pledge from time to time, provided that, if this exemption applies, the Security Agent (acting for itself or on behalf of any Secured Party) waives with binding effect on the parties to this Deed the restrictions set out in Clause 20.4 (*Waiver of defences*), Clause 20.6 (*Immediate Recourse*) and Clause 20.8 (*Deferral of Guarantors' rights*) of the Credit Facility Agreement and Section 9.4 (*Waiver of defences*), Section 9.6 (*Immediate Recourse*) and Section 9.8 (*Deferral of Guarantors' rights*) of the Senior Secured Note Purchase Agreement in respect of Pledgor 1's recourse claim (if any) arising as a result of the enforcement of the Pledge so that it shall be permitted for Pledgor 1 to make use of its rights to (i) set off its recourse claim (if any) against the loan obligation in respect of the amounts on-lent to it or (ii) otherwise use its recourse claim (if any) to settle or discharge this loan obligation. For the avoidance of doubt, the Security Agent (acting for itself or on behalf of any Secured Party) may elect not to waive the restrictions set out in Clause 20.4 (*Waiver of defences*), Clause 20.6 (*Immediate Recourse*) and Clause 20.8 (*Deferral of Guarantors' rights*) of the Credit Facility Agreement and Section 9.4 (*Waiver of defences*), Section 9.6 (*Immediate Recourse*) and Section 9.8 (*Deferral of Guarantors' rights*) of the Senior Secured Note Purchase Agreement in respect of Pledgor 1's recourse claim (if any) arising as a result of the enforcement of the Pledge against Pledgor 1 provided that if the Security Agent (acting for itself or on behalf of any Secured Party) so elects the limits in this Clause 7.3 apply in relation to any amounts which correspond to funds that have been borrowed under the Debt Documents and have been on-lent to, or otherwise been passed on to, Pledgor 1 or any of its subsidiaries.

- (b) The Security Agent agrees that the enforcement of the Pledge shall be limited if and to the extent that:
  - (i) the Pledge constitutes an Up-stream and/or Cross-stream Security; and
  - (ii) enforcement under the Pledge would otherwise (x) have the effect of reducing Pledgor 1's Net Assets to an amount that is lower than the amount of its Protected Capital or, if the amount of the Net Assets is already lower than the amount of its Protected Capital, cause the Net Assets to be further reduced and (y) thereby give rise to a violation of the capital maintenance requirement as set out in section 30 para 1 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*).
- (c) Within ten (10) Business Days after the Security Agent's notification on enforcement, Pledgor 1 shall provide a certificate signed by its managing director(s) (*Geschäftsführer*) confirming in writing if and to what extent the Pledge constitutes an Up-stream and/or Cross-stream Security and an enforcement of the Pledge would have the effects referred to in Clause (b)(i) above (the "**Management Determination**"). Such confirmation shall comprise an up-to-date balance sheet of Pledgor 1 and a detailed calculation, based on the provisions of this Deed, of the amount of the Net Assets and Protected Capital of Pledgor 1. The enforcement of the Pledge shall be permitted up to an amount which pursuant to the Management Determination would not cause the effects

set out in Clause (b)(ii) above (irrespective of whether or not the Security Agent agrees with the Management Determination) and the recourse under the Pledge against Pledgor 1 shall be limited by the same amount.

- (d) If the Security Agent (acting for itself or on behalf of any Secured Party) disagrees with the Management Determination, it may within ten (10) Business Days of its receipt request Pledgor 1 to deliver, at Pledgor 1's own cost and expense, within ten (10) Business Days of such request an up-to-date balance sheet of Pledgor 1, drawn-up by a firm of auditors appointed by Pledgor 1 in consultation with the Security Agent, together with a detailed calculation, based on the provisions of the Credit Facility Agreement and the Senior Secured Note Purchase Agreement, of the amount of the Net Assets and Protected Capital of Pledgor 1 (the "**Auditor's Determination**"). The enforcement of the Pledge shall be permitted up to an amount which pursuant to the Auditor's Determination would not cause the effects set out in Clause (b)(ii) above and the recourse under the Pledge against Pledgor 1 shall be limited by the same amount.
- (e) If Pledgor 1 has not complied with its obligation to deliver the Management Determination or the Auditor's Determination, in each case together with an up-to-date balance sheet, in accordance with the requirements set out in Clause (c) and Clause (d) above the enforcement of the Pledge will not be limited.
- (f) No reduction of the amount enforceable pursuant to this Clause 7.3 will prejudice the right of the Secured Parties to continue to enforce the Pledge (subject always to the operation of the limitations set out above at the time of such enforcement) until full satisfaction of the Secured Liabilities.
- (g) If (i) and to the extent the net assets as determined by the Auditors' Determination are lower than the amount enforced in accordance with the Management Determination or (ii) the Pledge has been enforced without regard to the limitations as set out in Clause (b) above because (x) the Management Determination was not delivered within the relevant time frame or (y) the Auditors' Determination was not delivered within the relevant time frame but has been delivered within ten (10) Business Days following the due date for the delivery of the Auditors' Determination pursuant to Clause (d) the Security Agent shall repay to Pledgor 1 upon written demand of Pledgor 1 any amount (if and to the extent already paid to the Secured Parties (or any of them)) in the case of (i) equal to the difference between the amount paid and the amount payable resulting from the Auditor's Determination, and in the case of (ii) above, which the Security Agent would not have been entitled to enforce had the Management Determination and the Auditors' Determination been delivered in time provided such demand for repayment is made (and all relevant documents or determinations are provided) to the Security Agent within three months (*Ausschlussfrist*) from the date the Pledge is enforced. The Security Agent may withhold any amount received pursuant to an enforcement of this Pledge until final determination of the amount of the net assets pursuant to the Auditors' Determination.

Pledgor 1 shall do everything commercially justifiable and legally permitted to avoid the enforcement of the Pledge becoming limited pursuant to the terms of this Clause 7.3 and shall in particular, within three (3) months after a written request of the Security Agent realise at least at market value any of its assets that is not necessary for its business (*nicht betriebsnotwendig*) and

is shown in its balance sheet with a book value that is in the reasonable opinion of the Security Agent significantly lower than the market value.

#### 7.4 **Recovery from payments received**

Subject to Clause 7.6 (*Financial collateral arrangement*), to the extent that the Pledgee has collected the Receivables, the collected amount shall be subject to the Pledge and the Pledgee may without prior notice apply such amount or any part thereof to satisfy any Secured Liabilities as soon as they become due.

#### 7.5 **Powers under Dutch law**

- (a) At any time after the Pledge has become enforceable (without prejudice to Clause 7.3 (*Limitation*)) the Pledgee may in its absolute discretion enforce all or any part of the Pledge and exercise all rights granted by Dutch law to a pledgee, including selling all or part of the Security Assets, in any manner as it sees fit or as directed by the Instructing Group.
- (b) The Pledgee shall not be required to notify any Pledgor, any Debtor or any person who has a limited right (*beperkt recht*) in relation to or has attached (*beslag leggen*) any Security Asset of any proposed or completed sale.
- (c) Only the Pledgee shall have the right referred to in article 3:251(1) of the Civil Code to make an application to the court for a different method of sale.

#### 7.6 **Financial collateral arrangement**

To the extent that this Deed constitutes a *financiële zekerheidsovereenkomst* under article 7:51 of the Civil Code (a "**Financial Collateral Arrangement**"), the Pledgee shall have the right:

- (a) to use and dispose of any Security Asset subject to the Financial Collateral Arrangement in accordance with the provisions of article 7:54 of the Civil Code; and
- (b) after the occurrence of an Enforcement Event which is continuing, to appropriate any Security Asset subject to the Financial Collateral Arrangement in or towards satisfaction of the Secured Liabilities.

#### 8. **DELEGATION**

The Pledgee may delegate in any manner to any person any rights exercisable by it under any Debt Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Pledgee thinks fit and the Pledgee may pass confidential information to any such delegate.

#### 9. **ORDER OF DISTRIBUTIONS**

Subject to any mandatory Dutch law provisions, all amounts received or recovered by the Pledgee in exercise of its rights under this Deed shall, subject to the rights of any creditors having priority, be applied in the order provided in Clause 17.1 (*Order of application*) of the Intercreditor Agreement.

## 10. **LIABILITY OF PLEDGEE**

Neither the Pledgee nor any Delegate shall be liable to any Pledgor, any Debtor, any Secured Party or any other person for:

- (a) any costs, losses, liabilities or expenses relating to the realisation of any Security Assets; or
- (b) any act or omission of the Pledgee, any Delegate or their respective officers, employees or agents in relation to the Security Assets or in connection with the Debt Documents, unless directly caused by its gross negligence or wilful misconduct.

## 11. **POWER OF ATTORNEY**

### 11.1 **Appointment**

- (a) To ensure each Pledgor's compliance with this Deed, each Pledgor hereby irrevocably appoints the Pledgee and each Delegate severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit to do anything which the relevant Pledgor is obliged to do under this Deed.
- (b) The attorney shall only exercise this power of attorney following an Enforcement Event, or for the purposes of preservation or perfection of the Pledge or to secure the performance of an obligation of a Pledgor hereunder where, after the expiry of five (5) Business Days following notice in writing from the Pledgee, that Pledgor fails, or unreasonably refuses, to do the same.
- (c) In exercising its power of attorney the attorney may act as counterparty to any Pledgor or act pursuant to a power of attorney granted by one of the other parties involved in the relevant acts.
- (d) The attorney is under no obligation to exercise its rights referred to in this Clause 11.

### 11.2 **Ratification**

Each Pledgor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 11.1 (*Appointment*).

## 12. **SAVING PROVISIONS**

### 12.1 **Continuing Security**

Subject to Clause 13 (*Discharge or termination of Pledge*), the Pledge is continuing security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

### 12.2 **Reinstatement**

If as a result of insolvency or any similar event:

- (a) any payment by any Pledgor or Debtor is avoided, reduced or must be restored; or
- (b) any discharge or arrangement (whether in respect of the obligations of any Pledgor or Debtor or any security for those obligations or otherwise) is made in whole or in part on

the basis of any payment, security or other thing which is avoided, reduced or must be restored,

then:

- (i) the liability of that Pledgor and each Debtor and the Pledge shall continue or be reinstated as if the payment, discharge or arrangement had not occurred; and
- (ii) each Secured Party shall be entitled to recover the value or amount of that payment or security from that Pledgor and Debtor, as if the payment, discharge or arrangement had not occurred.

### 12.3 **Waiver of defences**

Neither the obligations of any Pledgor under this Deed nor this Pledge will be affected by any act, omission or thing which, but for this Clause, would reduce, release or prejudice any obligations of any Pledgor under this Deed or this Pledge (without limitation, whether or not known to it or any Secured Party). This includes any transfer by a person of any of the Secured Liabilities.

### 12.4 **Pledgor intent**

Without prejudice to the generality of Clause 12.3 (*Waiver of defences*), each Pledgor expressly confirms that it intends that the Pledge shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Debt Documents and/or any facility or amount made available under any of the Debt Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; 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; and any fees, costs and/or expenses associated with any of the foregoing.

### 12.5 **Immediate recourse**

Each Pledgor waives any right it may have of first requiring the Pledgee to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Pledgor under this Deed. This waiver applies irrespective of any law or any provision of a Debt Document to the contrary.

### 12.6 **Appropriations**

Until all amounts which may be or become payable by the Debtors or each Pledgor under or in connection with the Debt Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated, the Pledgee may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Pledgor shall be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from any Pledgor or on account of that Pledgor's liability under this Deed.

#### **12.7 Deferral of Pledgor's rights**

Until all amounts which may be or become payable by the Debtors or the Pledgors under or in connection with the Debt Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated and unless the Pledgee otherwise directs, no Pledgor will subrogate into any right of the Pledgee or otherwise have any right by reason of performance by it of its obligations under the Debt Documents or by reason of any amount being payable, or liability arising, under this Clause 12:

- (a) to be indemnified under article 3:233 of the Civil Code;
- (b) to be indemnified by a Debtor;
- (c) to claim any contribution from any Debtor of any Debtor's obligations under the Debt Documents;
- (d) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Debt Documents or of any other guarantee or security taken pursuant to, or in connection with, the Debt Documents by any Secured Party;
- (e) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which the Debtor had given a guarantee, undertaking or indemnity;
- (f) to exercise any right of set-off against any Debtor; and/or
- (g) to claim or prove as a creditor of any Debtor in competition with any Secured Party.

Each Pledgor must hold in a segregated account any payment or distribution or benefit of security received by it contrary to this paragraph and shall promptly pay or transfer the same to the Pledgee or as the Pledgee may direct for application in accordance with Clause 9 (*Order of distributions*).

#### **12.8 Additional security**

The Pledge is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party.

### **13. DISCHARGE OR TERMINATION OF PLEDGE**

#### **13.1 Final redemption**

Subject to Clause 13.2 (*Retention of security*), if the Pledgee is satisfied that the Final Discharge Date has occurred, the Pledgee shall at the request and cost of the Pledgors confirm (in writing) that the Pledge has ended.

#### **13.2 Retention of security**

If the Pledgee considers that any amount paid or credited to any Secured Party under any Debt Document is capable of being avoided or otherwise set aside, that amount shall not be considered



to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid.

### **13.3 Termination**

The Pledgee is at all times entitled, at the cost of the Pledgors, to unilaterally terminate (*opzeggen*) the Pledge as envisaged by article 3:81(2)(d) of the Civil Code, in whole or in part and in respect of all or only part of the Secured Liabilities. Each Pledgor agrees in advance to any waiver of any contractual rights and obligations under or pursuant to this Deed within the meaning of article 6:160 of the Civil Code (*afstand van recht*) that the Pledgee may desire in connection with the termination of the Pledge.

## **14. REMEDIES, WAIVERS AND DETERMINATIONS**

### **14.1 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Pledgee, any right or remedy under the Debt Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Debt Documents. No waiver or election to affirm any of the Debt Documents on the part of the Pledgee shall be effective unless in writing. No single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Debt Documents are cumulative and not exclusive of any rights or remedies provided by law.

### **14.2 Certificates and determinations**

The records of the Pledgee are, in the absence of manifest error, conclusive evidence (*dwingend bewijs*) of the existence and the amount of the Secured Liabilities and any certification or determination by the Pledgee of a rate or amount under any Debt Document is, in the absence of manifest error, conclusive evidence of the matter to which it relates.

## **15. TRANSFER**

### **15.1 Transfer by the Pledgors**

No Pledgor may assign or transfer any of its rights or obligations under this Deed without the consent of the Pledgee.

### **15.2 Transfer by the Pledgee**

If the position of the Pledgee with respect to the Secured Liabilities is transferred or assigned in accordance with the Intercreditor Deed, the Pledgee may assign or transfer its rights under this Deed by way of an assignment or transfer of its rights (*cessie*) in combination with an assumption of its obligations (*schuldoverneming*) under this Deed or by transfer of its legal relationship (*contractsoverneming*) under this Deed, in each case to the extent such rights and obligations had not passed to the transferee or assignee by operation of law. Each Pledgor gives its irrevocable consent in advance to any assignment or transfer and co-operates in advance and shall co-operate with any such transfer, within the meaning of articles 6:156 and 6:159 of the Civil Code.

## **16. ILLEGALITY, UNENFORCEABILITY, RESCISSION, AMENDMENT**

### **16.1 Illegality and unenforceability**

If a provision of this Deed is or becomes illegal or unenforceable in any jurisdiction, that shall to the fullest extent possible under article 3:41 of the Civil Code not affect the legality or enforceability of any other provision of this Deed and the legality or enforceability in other jurisdictions of that or any other provision of this Deed. The Pledgor and the Pledgee shall negotiate in good faith to replace any provision that may be held unenforceable with a provision that is enforceable and that is as similar as possible in substance to the illegal or unenforceable provision.

### **16.2 Rescission**

Each Pledgor irrevocably waives any right under any applicable law to rescind (*ontbinden*) or nullify (*vernietigen*) this Deed in whole or in part and any right to suspend (*opschorten*) any obligation under this Deed.

### **16.3 Amendment**

This Deed may only be amended or supplemented in writing by the Pledgor and the Pledgee.

## **17. PAYMENTS**

All payments by a Pledgor under this Deed shall be made to such account, with such financial institution and in such other manner as the Pledgee may direct.

## **18. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signature on the counterparts were on a single copy of this Deed.

## **19. GOVERNING LAW AND JURISDICTION**

### **19.1 Governing law**

- (a) This Deed and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.
- (b) If any Pledgor is represented by an attorney in connection with the execution of this Deed or any other agreement or document pursuant hereto, then the parties to this Deed agree and accept that as between the Pledgor and the Pledgee, any matters referred to in article 11 of The Hague Convention on the Law Applicable to Agency of 14 March 1978 are governed by Dutch law.
- (c) The parties hereto agree and accept that any power of attorney granted in this Deed and any matters referred to in article 8 and article 11 of The Hague Convention on the Law Applicable to Agency of 14 March 1978 in respect thereof are governed by Dutch law.

### **19.2 Jurisdiction**

- (a) The courts of Amsterdam have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to non-contractual obligations arising out

of or in connection with this Deed or a dispute regarding the existence, validity or termination of this Deed) (a "**Dispute**").

- (b) Paragraph (a) above is for the benefit of the Pledgee only. As a result, the Pledgee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Pledgee may take concurrent proceedings in any number of jurisdictions.

#### 19.3 **Service of Process**

The Pledgor irrevocably elects domicile under this Deed at the office of Clarks Shoes Benelux B.V. for service of process in any proceedings before the Amsterdam courts. This Clause 19.3 does not affect any other method of service allowed by law.

## Schedule 1

### ASSET INFORMATION

#### BANK ACCOUNTS

<b>Pledgor</b>	<b>Account number</b>	<b>Account Bank</b>
Clarks Shoes Vertriebs GmbH		Bank Mendes Gans N.V.
C.&J. Clark International Limited		Bank Mendes Gans N.V.
C.&J. Clark International Limited		Bank Mendes Gans N.V.
C.&J. Clark International Limited		Bank Mendes Gans N.V.
C. & J. Clark Canada Limited		Bank Mendes Gans N.V.

## Schedule 2

### FORM OF ACCOUNT BANK NOTICE

From: [Pledgor]

To: [Account Bank]

Date: [\_\_\_\_\_]

We hereby inform you that a right of pledge (*pandrecht*) has been created by us in favour of Lucid Trustee Services Limited (the "**Pledgee**") on all our present and future rights and claims in respect of all our current and future bank accounts maintained from time to time with yourselves (the "**Bank Accounts**"), including without limitation the bank accounts with numbers [\_\_\_\_], [\_\_\_\_] and [\_\_\_\_] [*include BIC and IBAN*].

You may continue to follow payment instructions given to you by us in connection with the Bank Accounts unless and until you are instructed otherwise by us or by the Pledgee, after which the Pledgee shall be solely authorised to give you instructions in connection with the Bank Accounts.

To the extent that a right of pledge or set-off has been created or granted in your favour pursuant to your general banking conditions or otherwise, we would very much appreciate it if you could acknowledge and confirm that you hereby release and waive any such rights over or with respect to the Bank Accounts which you may have or at any time in the future may acquire.

Should you have any questions in connection with the above, please contact us at your earliest convenience.

Yours faithfully,

[Pledgor]

---

By:

Title:

**For acknowledgment of receipt and waiver and release of any rights of pledge and set-off with respect to the Bank Accounts**

*[name of Account Bank]*

---

By:

Title:

Date:

**SIGNATURE PAGE**  
**DUTCH BANK ACCOUNT PLEDGE**

**This Deed has been executed on the date stated at the beginning of this Deed.**

**Clarks Shoes Vertriebs GmbH:**



---

By: Andrew Stoodley

Title:



**Lucid Trustee Services Limited:**

---

By:

Title:

---

By:

Title:

**SIGNATURE PAGE**  
**DUTCH BANK ACCOUNT PLEDGE**

**This Deed has been executed on the date stated at the beginning of this Deed.**

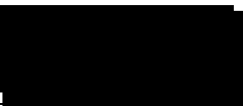
**Clarks Shoes Vertriebs GmbH:**

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By:

Title:

**Lucid Trustee Services Limited:**



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By:

Title:



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By:

Title:



**SIGNATURE PAGE**  
**DUTCH BANK ACCOUNT PLEDGE**

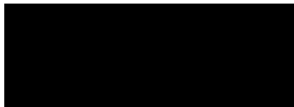
**This Deed has been executed on the date stated at the beginning of this Deed.**

**C.& J. Clark International Limited**



By: Andrew Stoodley

Title:

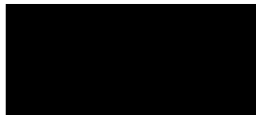


By: Paul Wakefield

Title:



**C&J Clark Canada Limited**



By: Tom White

Title:

