



**Registration of a Charge**

Company name: **G. BURLEY & SONS LIMITED**

Company number: **00495856**



XA0UAM97

Received for Electronic Filing: **22/03/2021**

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**Details of Charge**

Date of creation: **18/03/2021**

Charge code: **0049 5856 0019**

Persons entitled: **CRÉDIT MUTUEL FACTORING (AS 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: **REBECCA LEE**



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

Company number: 495856

Charge code: 0049 5856 0019

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th March 2021 and created by G. BURLEY & SONS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd March 2021 .

Given at Companies House, Cardiff on 23rd March 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



## Charge over Debts and Collection Account

**Dated 18 March 2021**

**G. BURLEY & SONS LIMITED**  
(as Chargor)

**CRÉDIT MUTUEL FACTORING**  
(as Factor)

Dentons UK and Middle East LLP  
One Fleet Place  
London EC4M 7WS  
United Kingdom  
DX 242

I certify that this is a true copy (subject only to certain permitted redactions).

A handwritten signature in black ink, appearing to be "Kirkland &amp; Ellis", written over a horizontal line.

Kirkland & Ellis International LLP

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# Charge over debts and collection accounts

Dated 18 March 2021

## Between

- (1) **G. BURLEY & SONS LIMITED**, a company incorporated under the laws of England and Wales, whose registered office is located at Tcl House 7 Outrams Wharf, Little Eaton, Derby, United Kingdom, DE21 5EL, registered with Companies House under number 00495856 (the **Chargor**);
- (2) **CRÉDIT MUTUEL FACTORING**, a company incorporated under the laws of France as a *société anonyme* and licensed as a *établissement de crédit*, whose registered office is located at Tour D2, 17 bis place des Reflets, 92988 Paris-La Défense Cedex, France, registered with the Trade and Companies Registry of Nanterre under number 380 307 413 (the "**Factor**");

## Recitals

- A The Chargor has entered into this Deed in connection with the Finance Documents and in order to grant security over the Charged Debts and Related Rights, the Collection Account and the Deposits and any other debt represented by the Collection Account (each such term as defined below).
- B It is intended that this document take effect as a deed notwithstanding the fact that a party may only execute this document under hand.

## It is agreed:

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Account Bank** means the bank referred to in Clause 6.1 (*Initial Account Bank*) or such other bank determined in accordance with Clause 6.2 (*Change of Account Bank*).

**Act** means the Law of Property Act 1925.

**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London and Paris.

**Charged Debt** means any Receivable which is transferred or purportedly transferred by the Chargor to the Factor under the Factoring Agreement but which fails to vest in the Factor for any reason.

**Collection Account** means the account with account number [REDACTED] and sort code [REDACTED] opened in the name of the Seller with the Account Bank into which payments in respect of each Receivable transferred to the Factor under the Factoring Agreement shall be deposited, as such collection account may be renumbered or re-designated from time to time.

**Deposits** means all monies from time to time standing to the credit of the Collection Account together with all rights and benefits accruing to or arising in connection with the Collection

Account (including, but not limited to, any entitlements to interest, all investments at any time made out of such monies or account and all rights to repayment of any of the same).

**Discharge Date** means the earlier of (i) the date on which all of the Secured Liabilities have been irrevocably paid and discharged in full and the Factor is no longer under any obligation to purchase any Receivable pursuant to the Factoring Agreement and (ii) the date on which the Security created by this Deed may otherwise be discharged in accordance with the Finance Documents.

**Event of Default** means any event referred to in clause 14.3.1 of the Factoring Agreement or any other event described by the Factor as an Event of Default from time to time under the Factoring Agreement, this Deed or any other Finance Document.

**Factoring Agreement** means the Master Agreement and the Receivables Purchase Agreement, taken as a whole.

**Finance Documents** means the Factoring Agreement, each Collection Account Security Document, any document, instrument or agreement entered into between the Parties for the purposes of the transfer of Receivables under the Factoring Agreement and any document, instrument or certificate designated as such by the Parties.

**Master Agreement** means the master agreement originally dated 29 September 2017 between Idverde SAS as original seller and the Factor (as amended and/or restated from time to time).

**Party** means a party to this Deed.

**Receiver** means an administrative receiver, a receiver and manager or a receiver, in each case, appointed under this Deed.

**Receivables Purchase Agreement** the receivables purchase agreement dated on or about the date of this Deed between the Chargor, (defined therein as the Company) and the Factor pursuant to which the Chargor has agreed to sell and the Factor has agreed to purchase the Receivables in accordance with the terms and conditions of the Master Agreement.

**Secured Liabilities** means in relation to the Chargor, all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Chargor to the Factor under any Finance Document, together with all interest (including, without limitation, default interest) accruing in respect of those obligations and liabilities.

**Security** means any Security Interest (as defined below) created, evidenced or conferred by or pursuant to this Deed.

**Security Assets** means all assets of the Chargor which are subject to this Security being the Charged Debts and any related rights, the Collection Account, the Deposits and any other debt represented by the Collection Account.

**Security Interest** means any mortgage, pledge, guarantee, lien, charge (fixed or floating), assignment, hypothecation, set-off or trust arrangement for the purpose of creating security, reservation of title or, security interest or any other agreement or arrangement having a substantially similar effect.

**Security Period** means the period beginning on the date of this Deed and ending on the Discharge Date.

## 1.2 Construction

1.2.1 Unless a contrary intention appears:

- (a) capitalised terms defined in the Factoring Agreement (including by way of incorporation therein) have, unless expressly defined in this Deed, the same meaning in this Deed;
- (b) any covenant of the Chargor under this Deed remains in force during the Security Period and is given for the benefit of the Factor;
- (c) if the Factor reasonably considers that an amount paid to the Factor under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed; and
- (d) unless the context otherwise requires, a reference to a Security Asset includes:
  - (i) any part of that Security Asset;
  - (ii) the proceeds of sale of that Security Asset; and
  - (iii) any present and future assets of that type;
- (e) this **Deed** is a reference to this Deed as amended, varied, novated, supplemented and replaced from time to time;
- (f) the **Chargor**, the **Factor** or a **Receiver** includes any or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted);
- (g) the **Factor** or a **Receiver** (except for the references in Clause 13 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates;
- (h) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (i) the words **include(s)**, **including** and in **particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (j) **liabilities** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (k) the words **other** and **otherwise** shall not be construed ejusdem generis with any preceding words where a wider construction is possible; and

- (l) a Clause or Schedule is to be construed as a reference to the relevant Clause of, or Schedule to this Deed.

- 1.2.2 Notwithstanding anything to the contrary in this Deed, the terms of this Deed shall not operate or be construed so as to prohibit or restrict any transaction, matter or other step not prohibited by the Factoring Agreement and the Factor shall promptly enter into such documentation and/or take such other action as is required by the Chargor (acting reasonably) in order to facilitate any such transaction, matter or other step at the English Seller's cost in accordance with Clause 17.3 (*Costs and Expenses*) of the Master Agreement.

### **1.3 Certificates**

A certificate of the Factor setting forth the amount of any of the Secured Liabilities shall, in the absence of manifest error, be prima facie evidence of such amount.

## **2 Covenant to pay**

### **2.1 Covenant to pay**

Subject to the Finance Documents, the Chargor shall, on demand, pay to the Factor and discharge the Secured Liabilities when they become due in the manner provided for in the Finance Documents.

## **3 Creation of Security**

- 3.1 The Chargor, with full title guarantee and as a continuing security in favour of the Factor for the payment, discharge and performance of all the Secured Liabilities, charges by way of first fixed charge all of its present and future right, title and interest in and to the Security Assets.

- 3.2 This Security created under this Deed shall not extend to Charged Debts and Related Rights which are retransferred by the Factor to the Chargor in accordance with any clauses of the Factoring Agreement and in respect of which the Chargor has irrevocably paid in full to the Factor the relevant retransfer price pursuant to the terms of the Factoring Agreement.

- 3.3 Trust

If or to the extent that the charge created in this Clause 3 (*Creation of Security*) is ineffective, the Chargor holds all of its present and future right, title and interest in and to the Security Assets on trust for the Factor.

## **4 Representations – General**

### **4.1 Nature of Security**

In entering into this Deed the Factor has relied on the representations of the Chargor that, and the Chargor represents and warrants to the Factor that subject to limbs (c), (f) and (g) of the Legal Reservations and the Perfection Requirements (to the extent applicable), this Deed creates those Security Interests it purports to create and is a continuing security to secure its payment and discharge of the Secured Liabilities.

### **4.2 Security Assets**

The Chargor represents and warrants to the Factor that:



- (a) immediately before entry into this Deed, it was the sole legal and beneficial owner of the Security Assets; and
- (b) unless otherwise consented to in writing by the Factor or as permitted under the Finance Documents, each of the Security Assets is free from any security interest (other than any Security Interest created by this Deed);
- (c) subject to the Legal Reservations and Perfection Requirements (to the extent applicable) the rights of the Factor to recover the Secured Liabilities against the Security Assets will rank in priority to the recovery rights of all other creditors except creditors whose claims are mandatorily preferred by laws of general application over secured creditors; and
- (d) it is not in breach of any law or regulation applicable to it or to which the Security Assets are subject, which gives rise to a material adverse effect on the ability of the Seller to perform its obligations under the Finance Documents.

#### **4.3 Times for making representations**

The representations and warranties set out in this Clause 4 are made by the Chargor on the date of this Deed and each such representation and warranty is deemed to be repeated by the Chargor in accordance with clause 12.1 of the Master Agreement.

### **5 General undertakings**

#### **5.1 Duration**

The undertakings in this Clause 5 shall remain in force throughout the Security Period.

#### **5.2 Security Assets**

- 5.2.1 Subject to sub-clause 5.2 below, the Chargor shall, upon request by the Factor, deliver to, and deposit with, the Factor all certificates and other documents or copies thereof evidencing or relating to the Security Assets or, as the Factor may direct, shall deliver and/or deposit such documents other than directly to the Factor upon the Factor's reasonable request.
- 5.2.2 In accordance with the terms of the Finance Documents, the Chargor, at its own expense, shall:
  - (a) get in and realise the Charged Debts and Related Rights (where applicable) in accordance with its Collection Procedures, and hold the proceeds of the getting in and realisation (until payment into the Collection Account is required in accordance with paragraph (b) below) upon trust for the Factor; and
  - (b) save to the extent that the Factor otherwise agrees, pay the proceeds of the getting in and realisation of Charged Debts and Related Rights (where applicable) into the Collection Account.

#### **5.3 Payments without deduction**

The Chargor covenants with the Factor that all payments to be made by it under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## **5.4 Negative pledge and restrictions on dealing**

5.4.1 The Chargor shall not create, purport to create or permit to subsist any Security Interest on any Security Asset other than any Security Interest created by this Deed;

5.4.2 sell, assign, transfer, novate, part with possession of, grant any interest over, lease or otherwise dispose of any Security Asset to any third party,

unless otherwise consented to in writing by the Factor or as permitted under the Finance Documents.

## **6 Collection Accounts**

### **6.1 Initial Account Bank**

The Collection Account must be maintained at an Account Bank approved by the Factor. The initial Account Bank for the Chargor is Lloyds Bank Plc.

### **6.2 Change of Account Bank**

6.2.1 The Account Bank may be changed to another bank approved by the Factor if the Chargor and the Factor so agree in writing.

6.2.2 Any change of Account Bank shall only become effective when the proposed new Account Bank agrees with the Factor and the Chargor, in a manner satisfactory to the Factor, to fulfil the role of the Account Bank under this Deed by delivering a signed acknowledgement to a notice substantially in the form of those set out in Part 1 (*Notice to Account Bank*) and Part 2 (*Acknowledgement of Account Bank*) of Schedule 1 (*Forms of Letter for Collection Accounts*) of this Deed.

6.2.3 If there is a change of Account Bank, the net amount (if any) standing to the credit of the Collection Account maintained with the old Account Bank will be transferred to the corresponding Collection Account maintained with the new Account Bank promptly upon the appointment taking effect and the Chargor hereby irrevocably gives all authorisations and instructions necessary for any such transfer to be made.

6.2.4 The Chargor must, as soon as reasonably practicable and in any event within five (5) Business Days after being so requested by the Factor, take any action which the Factor may reasonably require to facilitate a change of Account Bank pursuant to Clause 6.2.1 and any transfer of credit balances (including the execution of bank mandate forms).

### **6.3 Withdrawals**

6.3.1 Except with the prior consent of the Factor or as provided below, the Chargor may not withdraw or transfer (or attempt or be entitled to withdraw or direct the transfer of) all or any part of the Deposits from the Collection Account until the Security Period has expired.

6.3.2 The Chargor may 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 Factor or materially diminish the value of the Deposits or the effectiveness of the Security Interests created by this Deed (including without limitation, closing the Collection Account).

6.3.3 The Chargor shall, at the request of the Factor, authorise the Account Bank to pay all Deposits on a daily basis to such account as may be specified by the Factor.

- 6.3.4 The Factor (or a Receiver) may withdraw amounts standing to the credit of any Collection Account without prior notice to, or consent of the Chargor.
- 6.3.5 The Chargor shall authorise the Account Bank to deliver to the Factor the calling parameters map and access code relating to the Collection Account, in order to enable the Factor to monitor on a daily basis the operations of the Collection Account; and
- 6.3.6 The Chargor shall waive all rights of confidentiality in relation to the Collection Account vis à vis the Account Bank for the benefit of the Factor.

## **6.4 Notices of Charge**

The Chargor must:

- (a) promptly after the date of this Deed (and promptly upon a change of Account Bank pursuant to Clause 6.2 (*Change of Account Bank*)) serve a duly completed notice of charge on the Account Bank substantially in the form of Part 1 (*Notice to Account Bank*) of Schedule 1 (*Forms of Letter for Collection Accounts*); and
- (b) use its commercially reasonable endeavours to procure that the Account Bank promptly acknowledges that notice of charge by delivery to the Factor as soon as reasonably practicable after the date of this Deed an acknowledgement substantially in the form of Part 2 (*Acknowledgement of Account Bank*) of Schedule 1 (*Forms of Letter for Collection Accounts*) (and in the case of any notice served after the date of this Deed upon of a change of Account Bank pursuant to Clause 6.2 (*Change of Account Bank*) as soon as reasonably practicable after the date on which such notice is served).

## **7 When security becomes enforceable**

The security constituted by this Deed shall become immediately enforceable upon the occurrence of an Event of Default which is outstanding and the power of sale and other powers conferred by law (including under Section 101 of the Act), as varied or amended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of any Event of Default which is outstanding. After the security constituted by this Deed has become enforceable in accordance with this Clause 7 (*When security becomes enforceable*), the Factor may in its absolute discretion enforce all or any part of the security in any manner it sees fit, and may, in particular, apply all or any of the credit balance standing from time to time on any Collection Account (including all interest accrued on that balance) against all or any part of the Secured Liabilities.

## **8 Enforcement of Security**

### **8.1 General**

For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) do not apply to the security constituted by this Deed.

## **8.2 Powers on enforcement**

At any time after the charge created by this Deed has become enforceable the Factor may (without prejudice to any of its other rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) sell or otherwise dispose of the Security Assets to enable it to do so; and
- (b) exercise any other powers and rights which may be exercisable by the owner of the Security Assets and all other powers conferred on mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act; and
- (c) appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets in accordance with Clause 9.1.

## **8.3 Contingencies**

If the Factor enforces the security constituted by this Deed at a time when no Secured Liabilities are due but at a time when Secured Liabilities may or will become so due, the Factor (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account in the name of the Factor at such bank as may be designated for this purpose by the Factor.

## **8.4 Exclusion of liability**

Neither the Factor nor any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken in relation to the Security Assets;
- (b) for any failure to take any action in relation to the Security Assets;
- (c) to account as mortgagee in possession or for any loss upon realisation of the Security Assets;
- (d) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies; or
- (e) for any other default or omission in relation to the Security Assets for which a mortgagee in possession might be liable

other than to the extent of its fraud, gross negligence or wilful misconduct.

## **8.5 Agent of the Chargor**

Each Receiver is deemed to be the agent of the Chargor for all purposes and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor shall be solely responsible for its contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and the Factor shall not incur any liability (either to the Chargor or to any other person) by reason of the Factor making its appointment as a Receiver or for any other reason.

## **8.6 Privileges**

Each Receiver and the Factor is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that Section 103 of the Act does not apply.

## **8.7 Protection of third parties**

No person (including a purchaser) dealing with the Factor or a Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable; or
- (b) whether any power which the Factor or the Receiver is purporting to exercise has become exercisable; or
- (c) whether any Secured Liabilities remain due; or
- (d) how any money paid to the Factor or to the Receiver is to be applied.

## **8.8 Redemption of prior mortgages**

At any time after the occurrence of an Event of Default which is outstanding, the Factor may:

- (a) redeem any prior Security Interest against any Security Asset; and/or
- (b) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer and any accounts so settled and passed shall be conclusive and binding on the Chargor.

All principal moneys, interest, costs, and reasonable charges and expenses of and incidental to any such redemption and/or settlement and passing shall be paid by the Chargor to the Factor on demand.

## **8.9 Application of moneys**

8.9.1 Any moneys received or recovered by the Factor or a Receiver pursuant to this Deed after the Security created by it has become enforceable shall, to the extent permitted by law, be applied in the following order of priority:

- (a) in or towards the pro rata payment or provision for:
    - (i) all costs, fees and expenses incurred by the Factor under or in connection with this Deed; and
    - (ii) all sums owing to a Receiver;
  - (b) in or towards the discharge of the Secured Liabilities in any order chosen by the Factor; and
  - (c) then, in the payment of any surplus to the Chargor or other person entitled to it,
- and section 109(8) of the Act shall not apply.

8.9.2 Sub-clause 8.9.1 will override any appropriation made by the Chargor.

## **9 Receiver**

### **9.1 Appointment of Receiver**

At any time after the occurrence of an Event of Default which is outstanding in relation to the Chargor, or if the Chargor so requests of the Factor in writing, the Factor may without further notice appoint under seal or in writing under its hand any one or more persons to be a Receiver of all or any part of the Security Assets in like manner in every respect as if the Factor had become entitled under the Act to exercise the power of sale conferred under the Act.

### **9.2 Removal**

The Factor may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver):

- (a) remove any Receiver appointed by it; and
- (b) may, whenever it deems it expedient, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **9.3 Remuneration**

The Factor acting reasonably may fix the remuneration of any Receiver appointed by it and the maximum rate specified in Section 109(6) of the Act shall not apply.

### **9.4 Relationship with the Factor**

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) upon a Receiver of the Security Assets may after the security created by this Deed becomes enforceable be exercised by the Factor in relation to any Security Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **10 Powers of Receiver**

### **10.1 General**

10.1.1 Each Receiver has, and is entitled to exercise, all of rights, powers and discretions set out below in this Clause 10 in addition to those conferred on it by law.

10.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receivers.

### **10.2 Possession**

A Receiver may take immediate possession of, get in and collect any Security Assets.

### **10.3 Carry on Business**

A Receiver may carry on the business of the Chargor as it relates to the Security Assets as he thinks fit.

#### **10.4 Borrow Money**

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

#### **10.5 Sale of Assets**

10.5.1 A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit.

10.5.2 The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit.

#### **10.6 Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

#### **10.7 Legal Actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits or proceedings in relation to any Security Asset which he thinks fit.

#### **10.8 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

#### **10.9 Delegation**

A Receiver may delegate his powers in accordance with this Deed.

#### **10.10 Other powers**

A Receiver may do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or by law.

### **11 Delegation**

#### **11.1 Power of attorney**

The Factor or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed.

#### **11.2 Terms**

Any such delegation may be made upon any terms (including power to sub-delegate) which the Factor or any Receiver may think fit.

### **11.3 Liability**

Neither the Factor nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate except in the event of fraud, gross negligence or wilful misconduct.

## **12 Further assurances**

### **12.1 Registration at Companies House**

The Chargor consents to the registration of this Deed at Companies House pursuant to Part 25 of the Companies Act 2006 and agrees to take all action necessary to procure that such registration is made within the timeframe required by law including but not limited to the delivery of all documents necessary for registration of this Deed by or on behalf of the Factor.

### **12.2 Further action**

The Chargor shall at all times and at its reasonable costs, take (or procure the taking of) all steps and actions and promptly approve, execute and register (or procure the approval, execution and delivery of) all decisions, instruments and documents, as may be reasonably necessary or appropriate, or as the Factor or a Receiver may reasonably require, to (i) perfect by registration or protect the rights of the Factor under this Deed or (ii) enable the Factor to exercise and enforce its rights and remedies under this Deed.

## **13 Power of attorney**

The Chargor, by way of security, irrevocably and severally appoints the Factor each Receiver and each of their respective delegates and sub-delegates to be its attorney to take any action which the Chargor is obliged to or deems reasonably necessary to take under this Deed (including, but not limited to complete, execute and serve any demands, notices and certificates as the Factor considers appropriate in order to realise its Security Interests and, in relation to negotiable instruments, endorse all documents necessary to constitute the Factor as the holder of the documents relating to the Security Assets) PROVIDED THAT such power of attorney shall not be exercisable unless an Event of Default has occurred and is outstanding. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 13.

## **14 Preservation of Security**

### **14.1 Waiver of Defences**

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or the Factor) including:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;



- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment of a Finance Document;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of, or any Security created by, any person under any Finance Document or the failure by any obligor to enter into or be bound by any Finance Document; or
- (h) any insolvency, liquidation, administration or similar procedure.

## **14.2 Immediate Recourse**

The Chargor waives any right it may have of first requiring the Factor (or any agent on its behalf) to proceed against or enforce any other rights or security or claim repayment from any person before claiming from the Chargor under this Deed.

## **14.3 Right of Appropriation**

14.3.1 This Clause 14.3 applies to the extent the Security Assets constitute **financial collateral** and this Deed constitutes a **financial collateral arrangement** (within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003).

14.3.2 If and to the extent that this Clause 14.3 applies, the Factor may appropriate the Security Assets. If the Factor exercises its right of appropriation then it shall for these purposes value:

- (a) any relevant Collection Account and the amount standing to the credit of that Collection Account, together with any accrued interest not credited to the Collection Account, at the time of the appropriation; and
- (b) any other relevant Security Asset by reference to an independent valuation or other procedure determined by the Factor, acting reasonably, at the time of the appropriation.

## **14.4 Additional Security**

14.4.1 This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Factor.

14.4.2 No prior security held by the Factor (in its capacity as such or otherwise) over any Security Asset will merge into this Security.

## **15 Miscellaneous**

### **15.1 Currency**

The Factor may convert any moneys received, recovered or realised under this Deed (including the proceeds of any previous conversion under this Clause 15) from their existing currency into any other currency, by purchasing that other currency at the spot rate of exchange of the Factor for the purchase of any currency with any other currency in the London foreign exchange market.

## **15.2 Tacking**

The Factor must perform its obligations under the Factoring Agreement and Finance Documents.

## **15.3 New Accounts**

- 15.3.1 If any subsequent charge or other interest affects any Security Asset, the Factor may open a new account with any obligor.
- 15.3.2 If the Factor does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
- 15.3.3 As from that time all payments made to the Factor will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability until the net amount extinguishes liability.

## **15.4 Perpetuity Period**

The perpetuity period for the trust in this Deed is 125 years.

## **16 Release**

### **16.1 Release**

At the end of the Security Period or if otherwise agreed between the Chargor and the Factor or provided for under the terms of the Finance Documents, the Factor must, at the request and cost of the Chargor, take whatever action is reasonably necessary to release the Security Assets from this Security and permit withdrawals from the Collection Account.

### **16.2 Representations on Release**

The Factor shall make and give no representations, warranties or covenants in relation to the Security Assets released pursuant to Clause 16.1 (*Release*).

### **16.3 Reinstatement**

- 16.3.1 Any release, settlement, discharge, re-assignment or arrangement (in this Clause 16, a release) made by the Factor on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to insolvency proceedings.
- 16.3.2 If any avoidance, reduction or clawback occurs or order is made as referred to in sub-clause 16.3.1, then the release given by the Factor shall have no effect and shall not prejudice the right of the Factor to enforce this Security in respect of the Secured Liabilities. As between the Chargor and the Factor, this Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Factor as security for the Secured Liabilities.

## **17 Calculations and Certificates**

### **17.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Factor are prima facie evidence of the matters to which they relate.

### **17.2 Certificates and Determinations**

Any certification or determination by the Factor of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **18 Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **19 Remedies and Waivers**

No failure to exercise, nor any delay in exercising, on the part of the Factor, any right or remedy under this Deed shall operate as a waiver, nor shall any 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 this Deed are cumulative and not exclusive of any rights or remedies provided by law.

## **20 Amendments and Waivers**

Any term of this Deed may be amended or waived only with the written consent of the Chargor and the Factor.

## **21 Counterparts**

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

## **22 Third Party Rights**

Except as expressly provided elsewhere in this Deed, a person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 (the Third Parties Act) to enforce, or to enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

The parties to this Deed may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person that is not a party to this Deed.

## **23 Governing Law and Enforcement**

### **23.1 Governing Law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

### **23.2 Jurisdiction**

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

23.2.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

23.2.3 This Clause 23 is for the benefit of the Factor only. As a result, the Factor shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Factor may take concurrent proceedings in any number of jurisdictions.

This Deed has been entered into and executed as a deed with the intention that it be delivered on the date stated at the beginning of this Deed.

# Schedule 1 – Forms of letter for Collection Accounts

## Part 1 – Notice to Account Bank

[On the letterhead of Chargor]

From : **G. Burley & Sons Limited**  
Tcl House 7 Outrams Wharf, Little Eaton,  
Derby, United Kingdom, DE21 5EL (the **Chargor**)

To: **Lloyds Bank PLC**  
25 Gresham Street, London, EC2V 7HN  
(the **Collection Account Bank**)

Copy: **Crédit Mutuel Factoring**  
Tour D2, 17 bis place des Reflets,  
92988 Paris-La Défense Cedex  
France  
(the **Factor**)

[Date]

Dear Sirs,

**Charge over Collection Accounts (the Charge) dated [\*\* ] 2021 between G. Burley & Sons Limited (the Chargor) and Crédit Mutuel Factoring (the Factor) relating to the account with account number [REDACTED] and sort code [REDACTED] (the Collection Account)**

This letter constitutes notice to you that, under the Charge (a copy of which is attached), the Chargor has charged (by way of a first fixed charge) in favour of Crédit Mutuel Factoring (the **Factor**) as first priority chargee all monies from time to time standing to the credit of the Collection Account (the **Deposits**) and detailed below together with all other rights and benefits accruing to or arising in connection with the Collection Account (including, but not limited to, entitlements to interest).

We hereby waive all rights of confidentiality in relation to each Collection Account vis-à-vis the Factor and hereby irrevocably instruct and authorise you to:

- (a) disclose to the Factor at our expense any information relating to any Collection Account requested by the Factor (without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure);
- (b) may notify the Factor of any failure by the Chargor to pay any fees, costs, expenses or other amounts due and payable by the Chargor to you in relation to a Collection Account, and, in the event that the Factor elects (in its absolute discretion) to pay such fees, costs, expenses or other amounts (as described above), to accept such payment as good discharge of the relevant fees, costs, expenses, and/or other amounts due and payable by the Chargor (without any right of recourse for you against the Factor arising as a result of the Factor's payment or your acceptance of such payment);
- (c) provide to the Factor (or any bank appointed by it) and us, on a daily basis via SWIFT messages [MT940] and [MT94], statements in connection with each Collection Account;

- (d) provide the Factor with view rights over each Collection Account, by way of the Collection Account Bank cash management system; and
- (e) process [SWIFT MT 101] messages for the purposes of debiting and withdrawing from each Collection Account amounts standing to the credit thereof and transferring such amounts to the credit of the Factor's bank account with IBAN [\*\* ] and BIC [\*\* ] (or such other account as notified to you by the Factor from time to time) (it being understood that the Factor will not be authorised to send instructions which would result in the relevant Collection Accounts having a debit position).

The instructions in this letter may not be revoked or amended without the prior written consent of the Factor or its written confirmation that the Deposits have been fully re-assigned to us.

Please acknowledge receipt of this notice and indicate your agreement to the terms of it and to the additional terms set out in the Collection Account Bank Acknowledgement (the **Collection Account Bank Acknowledgement**) by signing and returning to the Factor (with a copy to us) the collection account bank acknowledgement.

This letter and any non-contractual obligations arising out of it, shall be governed by, any construed in accordance with, the law of England.

Yours faithfully,

.....  
(Authorised signatory)  
for the Chargor

## Part 2 – Acknowledgement of Account Bank

Date: [●]

To:

- (1) [Client name/address] (the "**Account Holder**")
- (2) [Charge Holder name/address] (the "**Charge Holder**")

Lloyds Bank plc  
Commercial Banking  
PO Box 1000  
BX1 1LT

Dear [salutation for Client and Charge Holder],

Bank Account Title	Bank Account Details

(including any renewal, redesignation and replacement thereof, the "**Account(s)**").

### Notice of charge dated [●] (the "**Notice**")

Lloyds Bank plc (the "**Bank**") acknowledges receipt of the Notice and acknowledges that the Account(s) and all monies standing to the credit of the Account(s) (the "**Deposit**") are subject to a charge dated [insert date] (the "**Charge**") in favour of the Charge Holder. The Bank has no knowledge of the particulars of the Charge. The Bank does not confirm or agree to any terms, restrictions or other matters set out in the Notice other than any that are specifically acknowledged in this letter.

Subject to the other provisions of this letter, the Bank may allow the Account Holder to continue to operate the Account(s) in the ordinary course in accordance with the Bank's applicable terms and conditions and any mandates or specific agreements entered into between the Bank, the Account Holder and the Charge Holder (the "**Account Terms**") and in particular:

- (a) the Bank may continue to collect credits payable to or endorsed in favour of the Account Holder; and
- (b) instructions in relation to the Account(s) will be accepted by the Bank in accordance with the **Account Terms** including the terms of the bank mandate named "Incorporated Company Authority" and completed by the Account Holder in relation to the Account(s) and dated on or about the date of this letter (the "**Mandate**") and as amended from time to time, and for the avoidance of doubt including:

- (i) if indicated to do so in an instruction given in accordance with the Mandate, providing the Factor, via SWIFT message MT940, with a statement in connection with the Account(s) on a daily basis; and
- (ii) processing SWIFT MT 101 messages for the purposes of debiting and withdrawing from the Account(s) amounts standing to the credit thereof; and
- (iii) if instructed to do so in the MT101 SWIFT message, which has been set up based on Lloyds being in receipt of the MT101 application form that has been signed and agreed by the appropriate Mandate signatories, transferring such amounts to the credit of the Charge Holder's bank account:

IBAN [REDACTED]

BIC [REDACTED]

(or such other account as notified to it in the MT101 the Collection Account Bank receives) (please note: the Bank will act on the MT101 which the Bank receives, and that MT101 will include the detail of the account to which the Bank is being requested to transfer the funds),

and for this purpose the Account Holder undertakes that it will ensure that the Account(s) is operated in credit at all times.

The Bank acknowledges that at all times prior to the Charge being released the Bank shall not be entitled to combine the Deposit with monies in any other account or to exercise any right of set-off or counterclaim against money in the Account(s) in respect of any sum owed to the Bank on any other account of the Account Holder, save for fees, charges and interest payable to the Bank for the operation of the Account(s).

Upon receipt of a written notice from the Charge Holder in the form attached to this letter (a "**Blocking Notice**"), the Bank shall acknowledge receipt and shall inform the Charge Holder of the information and documents it requires in order for the Charge Holder to be able to give instructions in relation to the Account(s) and the Deposit and details of any further steps that the Charge Holder will be required to take.

Upon the Bank acknowledging receipt of the Blocking Notice no further transactions (inbound or outbound) will be authorised to take place on the Account(s) until the Bank receives, in form and substance satisfactory to the Bank, the further documents and information from the Charge Holder noted in the acknowledgement of the Blocking Notice.

Following the Bank's acknowledgement of the Blocking Notice and until the Charge Holder confirms in writing that the Blocking Notice is revoked or the Charge has been released:

- (a) the Bank shall be entitled to rely on any instruction or notice appearing or purporting to be given by an authorised signatory of the Charge Holder and the Bank shall be under no duty to enquire as to the validity of any Blocking Notice (or any signatures appearing therein) or any other instruction or notice purporting to be from the Charge Holder. It being understood that the Bank shall have no obligation nor duty to check if the conditions for the service of the Blocking Notice are fulfilled and the Bank's obligations shall be fully discharged in respect of the Account Holder in acting upon such notifications and/or instructions from the Charge Holder; and
- (b) notwithstanding paragraph 6(a) above, the Bank shall have no obligation to action any instruction or notice appearing or purporting to be given by an authorised



signatory of the Charge Holder, unless and until it has received the information and documents referred to in the Bank's acknowledgement of the Blocking Notice.

The Charge Holder shall notify the Bank in writing as soon as the Blocking Notice is revoked or the Charge is released in the forms scheduled to this letter.

Any Blocking Notice, revocation of the Blocking Notice or confirmation as to the release of the Charge must be addressed and sent to : *[insert contact details for Relationship Manager Team – not specific named person as these can change]* (or such other details as may be advised in writing by the Bank to the Account Holder and the Charge Holder as being the replacement address for such notices).

This letter and the operation of the Account(s) are subject at all times to the Account Terms, but we confirm that, other than in relation to paragraph 3 above, as at the date of this letter those Account Terms do not conflict with the specific confirmations provided by us in, and the specific matters contemplated by, this letter. It is understood that:

- (a) should there be any conflict between the Account Terms and any provision of this letter then this letter shall prevail; and
- (b) the Account is in, and will remain at all times in, the name of the Account Holder.

The Bank shall have only the duties and responsibilities expressly set out herein (and in the acknowledgement to the Blocking Notice) and in the Account Terms in effect from time to time in relation to the Account(s) and shall not be deemed to be an agent, bailee or fiduciary for any party, including, but not limited to, the Account Holder or the Charge Holder.

The Bank, its agents, employees, officers and directors will not be liable for any damages, costs or losses to the Account Holder, the Charge Holder or any other person or have any liability whatsoever arising as a result of taking or not taking any action under or in connection with the Charge, this letter, the Notice or the Blocking Notice unless directly caused by its gross negligence or wilful misconduct in complying with the terms of this letter.

This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

For and on behalf of Lloyds Bank plc

Signatories

The Chargor

Executed as a deed by ~~G. Burley and Sons Ltd~~

JR.  
G. BURLEY & SONS LIMITED

acting by

Name:

JONATHAN RHODES

Capacity:

DIRECTOR

in the presence of:

Witness' signature:

Name:

SAM HUXLEY

Address:

Occupation:

ORGANIC DEVELOPMENT DIRECTOR

The Factor



Executed as a deed by Credit Mutuel Factoring

acting by

Name:

MAGNIEN Cyrille

Capacity:

Director Relation Clients

in the presence of:

Witness' signature:



Name:

CARBONEL Magali

Address:



Occupation:

Customer Relationships Manager