



Registration of a Charge

Company name: **LINDE MATERIAL HANDLING EAST LIMITED**

Company number: **02791930**



X54B9Z08

Received for Electronic Filing: **06/04/2016**

Details of Charge

Date of creation: **01/04/2016**

Charge code: **0279 1930 0004**

Persons entitled: **FOUR SHARES LIMITED**

Brief description: **NONE.**

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **THOMAS WALLIS**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2791930

Charge code: 0279 1930 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st April 2016 and created by LINDE MATERIAL HANDLING EAST LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th April 2016 .

Given at Companies House, Cardiff on 7th April 2016

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

CERTIFIED A TRUE AND COMPLETE COPY
OF THE ORIGINAL

1 April 2016


FRESHFIELDS BRUCKHAUS DERINGER LLP
65 FLEET STREET
LONDON
EC4Y 1HS

LINDE MATERIAL HANDLING EAST LIMITED

(as Chargor)

and

FOUR SHARES LIMITED

(as Security Trustee acting as trustee of the Pension Schemes)

DEED OF AMENDMENT

in respect of a

**FLOATING CHARGE DATED 15 AUGUST
2012**

- *Amended to cover all pension obligations until
30 June 2021*



FRESHFIELDS BRUCKHAUS DERINGER

A DEED OF AMENDMENT made on 1 April 2016

BETWEEN

- (1) **LINDE MATERIAL HANDLING EAST LIMITED** (registered number 02791930) whose registered office is at Kingsclere Street, Basingstoke, Hampshire, RG21 6XJ (the *Chargor*)
- (2) **FOUR SHARES LIMITED** (company number 7867591) of 5 New Street Square, London EC4A 3TW as security trustee for the Pension Schemes (the *Security Trustee*).

WHEREAS

(A) By a floating charge deed dated 15 August 2012 (the *Floating Charge Deed*) the Chargor granted a floating charge to the Security Trustee over all of its assets. The Floating Charge Deed was amended by a deed of amendment dated 30 May 2014 (the *2014 Amendment Deed*) so that it covers a failure to pay pension obligations under any Recovery Plan or any Schedule of Contributions (each as defined in the 2014 Amendment Deed) for the pension schemes listed in Schedule 1 to this Deed (the *Pension Schemes*) in place from time to time until 30 June 2018.

(B) The Chargor and the Security Trustee wish to amend the Floating Charge Deed in order for it to cover a failure to pay such pension obligations until 30 June 2021.

(C) The Security Trustee enters into this deed of amendment (the *2016 Amendment Deed*) as agent and trustee for the trustees of the Pension Schemes and holds the subject of the Floating Charge Deed as trustee for the trustees of the Pension Schemes on the terms set out in a Security Trust and Intercreditor Deed dated 15 August 2012 (as amended).

(D) Each party has obtained the required authority to amend the Floating Charge Deed.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms in this 2016 Amendment Deed (including the recitals hereto) shall, except where the context otherwise requires and save where otherwise defined herein, bear the meanings ascribed to them in the Floating Charge Deed (as amended by the 2014 Amendment Deed).

1.2 The Floating Charge Deed shall continue in full force and effect save as amended by the 2014 Amendment Deed and this 2016 Amendment Deed and references herein or hereafter to the Floating Charge Deed shall, in the absence of express indication to the contrary, be construed as references to the Floating Charge Deed as amended by the 2014 Amendment Deed and this 2016 Amendment Deed. All references in the Floating Charge Deed to *this Deed, hereof, hereby, hereto, hereafter, herein* and other similar expressions shall be deemed to be references to



the Floating Charge Deed as amended by the 2014 Amendment Deed and this 2016 Amendment Deed.

2. AMENDMENT TO THE FLOATING CHARGE DEED

With effect from the date of this Amendment Deed, the Chargor and the Security Trustee amend the Floating Charge Deed as follows:

2.1 The definition of *Guarantee* is deleted and replaced with the following:

"Guarantee means, for each Blackwood Scheme, the guarantee dated 1 April 2016 in respect of such Blackwood Scheme, granted by KION in favour of the trustees of such Blackwood Scheme;"

where the date to be included is the date of the guarantee for each Blackwood Scheme granted by Kion Material Handling GmbH on or around the date of this Deed;

2.2 Clause 16.3 is deleted and replaced with the following:

"On 30 June 2021, the Security Trustee shall unconditionally release the assets secured under the Floating Charge Deed."

3. CONFIRMATION OF OBLIGATIONS

Each of the parties hereto confirms that, notwithstanding the amendment of the Floating Charge Deed effected hereby, the obligations of each party as set out in the Floating Charge Deed shall remain valid, binding and effective against it in accordance with the terms thereof and shall continue in full force and effect until the Floating Charge Deed is terminated.

4. CONTINUANCE

The Floating Charge Deed (as amended hereby) and this Amendment Deed shall henceforth be read and construed together and shall be deemed to constitute one and the same instrument.

5. COUNTERPARTS

This Amendment Deed may be executed in any number of counterparts and by any party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, when taken together, shall constitute one and the same Deed.

This Amendment Deed is executed and delivered as a deed on the date specified at the beginning.



SCHEDULE 1
PENSION SCHEMES

Lansing Linde (Blackwood) Ltd Retirement Benefits Plan

Lansing Linde (Blackwood) (1987) Pension Scheme

Lansing Linde Executive Pension Scheme

Lansing Linde Pension Scheme



The Chargor

EXECUTED by
 LINDE MATERIAL HANDLING EAST
 LIMITED
 acting by a director in the presence of:

)
)
)
)

Anyam

Director

Witness: *Anyam*

Name: *ANDREW DALL*

Address: *31A CHARLES ST*

OXFORD

OX2 6UX

Occupation: *DIRECTOR COMMERCIAL OPERATIONS*

KARLA THOMAS
as per below.

The Security Trustee

EXECUTED as a DEED by
 FOUR SHARES LIMITED
 acting by a director in the presence of:

)
)
)

WRL

Director

Witness: *HTW*

Name: *KARLA THOMAS*

Address: *30 LYMINGTON CUBE*

HATCH WARREN

BOSINGSTOCK

Occupation: *EXECUTIVE ASSISTANT*



FRESHFIELDS BRUCKHAUS DERINGER

30 May 2014

LINDE MATERIAL HANDLING EAST LIMITED

(as Chargor)

CERTIFIED A TRUE AND COMPLETE COPY
OF THE ORIGINAL

Freshfields Bruckhaus Deringer
FRESHFIELDS BRUCKHAUS DERINGER LLP
65 FLEET STREET
LONDON
EC4Y 1HS

and

FOUR SHARES LIMITED

(as Security Trustee acting as trustee of the Pension Schemes)

DEED OF AMENDMENT

in respect of a

**FLOATING CHARGE DATED 15 AUGUST
2012**

- *Amended to cover all pension obligations until
30 June 2018*
- *Amended to reflect new Guarantees provided by
KION in respect of the Blackwood Schemes*



FRESHFIELDS BRUCKHAUS DERINGER

A DEED OF AMENDMENT made on 30 May 2014

BETWEEN

- (1) **LINDE MATERIAL HANDLING EAST LIMITED** (registered number 02791930) whose registered office is at Kingsclere Street, Basingstoke, Hampshire, RG21 6XJ (the *Chargor*)
- (2) **FOUR SHARES LIMITED** (company number 7867591) of 5 New Street Square, London EC4A 3TW as security trustee for the Pension Schemes (the *Security Trustee*).

WHEREAS

(A) By a floating charge deed dated 15 August 2012 (the *Floating Charge Deed*) the Chargor granted a floating charge to the Security Trustee over all of its assets. The Floating Charge Deed is enforceable where there is a failure to pay pension obligations under the 2009 Recovery Plans for any of the pension schemes listed at Schedule 1 to this Deed (the *Pension Schemes*).

(B) The Security Trustee enters into this deed of amendment (*Amendment Deed*) as agent and trustee for the trustees of the Pension Schemes and holds the subject of the Floating Charge Deed as trustee for the trustees of the Pension Schemes on the terms set out in a Security Trust and Intercreditor Deed dated 15 August 2012 (as amended).

(C) The Floating Charge Deed does not currently cover any recovery plan that replaces the 2009 Recovery Plan.

(D) The Chargor and the Security Trustee wish to amend the Floating Charge Deed in order for it to cover a failure to pay pension obligations under any Recovery Plan or any Schedule of Contributions (each as defined below) for the Pension Schemes in place from time to time until 30 June 2018.

(E) Each party has obtained the required authority to amend the Floating Charge Deed.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms in this Amendment Deed (including the recitals hereto) shall, except where the context otherwise requires and save where otherwise defined herein, bear the meanings ascribed to them in the Floating Charge Deed.

1.2 The Floating Charge Deed shall continue in full force and effect save as amended by this Amendment Deed and references herein or hereafter to the Floating Charge Deed shall, in the absence of express indication to the contrary, be construed as references to the Floating Charge Deed as amended by this Amendment Deed. All references in the Floating Charge Deed to *this Deed, hereof, hereby, hereto*,



FRESHFIELDS BRUCKHAUS DERINGER

hereafter, herein and other similar expressions shall be deemed to be references to the Floating Charge Deed as amended by this Amendment Deed.

2. AMENDMENT TO THE FLOATING CHARGE DEED

With effect from the date of this Amendment Deed, the Chargor and the Security Trustee amend the Floating Charge Deed as follows:

2.1 A definition of *Blackwood Schemes* is inserted as follows:

Blackwood Schemes means the Lansing Linde (Blackwood) (1987) Pension Scheme and the Lansing Linde (Blackwood) Limited Retirement Benefits Plan) (and each a *Blackwood Scheme*);

2.2 The definition of *Enforcement Event* is deleted and replaced with the following:

Enforcement Event means in relation to the Blackwood Schemes that both of the events at (a) and (b) below have occurred and are continuing prior to the unconditional release of security, and in relation to the Lansing Linde Schemes that only the event described at (a) below has occurred and is continuing prior to the unconditional release of security:

- (a) a Participating Employer of a Pension Scheme has failed to pay any Recovery Plan Payment to the Pension Schemes on the date on which it is due and payable under the Schedule of Contributions;
- (b) such Recovery Plan Payment is guaranteed by KION under the terms of a Guarantee, the trustees of the relevant Blackwood Scheme have demanded payment from KION under the relevant Guarantee (to the extent that such Recovery Plan Payment is guaranteed by the Guarantee) and KION has failed to make such payment when due under the terms of the relevant Guarantee;

2.3 The definition of *Group* is deleted and replaced with the following:

Group means KION Group AG and its Subsidiaries;

2.4 The definition of *Guarantee* is deleted and replaced with the following:

Guarantee means, for each Blackwood Scheme, the guarantee dated 30 May 2014 in respect of such Blackwood Scheme, granted by KION in favour of the trustees of such Blackwood Scheme;

2.5 The definition of *KION* is deleted and replaced with the following:

KION means KION Material Handling GmbH whose corporate seat is located at Abraham-Lincoln-Strasse 21, D-65189 Wiesbaden, Germany;

2.6 A definition of *Lansing Linde Schemes* is inserted as follows:



Lansing Linde Schemes means the Lansing Linde Pension Scheme and the Lansing Linde Executive Pension Scheme (and each a ***Lansing Linde Scheme***);

2.7 The definition of ***Recovery Plan Payment*** is deleted and replaced with the following:

Pension Plan Payment means, for each Pension Scheme, any payment that is due under the Schedule of Contributions or Recovery Plan from time to time in relation to that Pension Scheme;

2.8 All references to ***Recovery Plan Payment*** in the Floating Charge Deed shall be replaced by ***Pension Plan Payment***.

2.9 The definition of ***2009 Recovery Plan*** is deleted and replaced with the following:

Recovery Plan means, for each Pension Scheme, that Pension Scheme's recovery plan from time to time in force and prepared in accordance with section 226 of the Pensions Act 2004;

2.10 All references to ***2009 Recovery Plan*** in the Floating Charge Deed shall be replaced by ***Recovery Plan***.

2.11 The definition of ***2009 Recovery Plan Payment*** is deleted.

2.12 All references to ***2009 Recovery Plan Payment*** in the Floating Charge Deed shall be replaced by ***Pension Plan Payment***.

2.13 The definition of ***2009 Schedule of Contributions*** is deleted and replaced with the following:

Schedule of Contributions means, for each Pension Scheme, the Pension Scheme's schedule of contributions from time to time in force and prepared in accordance with section 227 of the Pensions Act 2004.

2.14 All references to ***2009 Schedule of Contributions*** in the Floating Charged Deed shall be replaced by ***Schedule of Contributions***.

2.15 Clause 2(b) is deleted and replaced with the following:

the Charging Companies, after the occurrence of an Enforcement Event, providing cash cover to the Security Trustee in accordance with the terms of the Security Documents for the then remaining maximum liabilities, currently payable or due to become payable at any future date up to and including the unconditional release of security, as described at 16.3 below, of the Participating Employers under any Recovery Plan or Schedule of Contributions,

2.16 Clause 6.3 is deleted and replaced with the following:



6.3 Cash Cover

After the occurrence of an Enforcement Event which is continuing the Chargor shall, immediately on demand, provide to the Security Trustee full cash cover for the then remaining contributions currently payable or to become payable at any future date up to and including the unconditional release of security, as described at 16.3 below under the Recovery Plans.

2.17 Clauses 15.2 (b) and (c) are deleted, clause 15.2(a) is amended to delete the words 'other than any 2009 Recovery Plan'.

2.18 A new clause 16.3 is inserted as follows:

On 30 June 2018, the Security Trustee shall unconditionally release the assets secured under the Floating Charge Deed.

3. CONFIRMATION OF OBLIGATIONS

Each of the parties hereto confirms that, notwithstanding the amendment of the Floating Charge Deed effected hereby, the obligations of each party as set out in the Floating Charge Deed shall remain valid, binding and effective against it in accordance with the terms thereof and shall continue in full force and effect until the Floating Charge Deed is terminated.

4. CONTINUANCE

The Floating Charge Deed (as amended hereby) and this Amendment Deed shall henceforth be read and construed together and shall be deemed to constitute one and the same instrument.

5. COUNTERPARTS

This Amendment Deed may be executed in any number of counterparts and by any party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, when taken together, shall constitute one and the same Deed.

This Amendment Deed is executed and delivered as a deed on the date specified at the beginning.



SCHEDULE 1
PENSION SCHEMES

Lansing Linde (Blackwood) Ltd Retirement Benefits Plan

Lansing Linde (Blackwood) (1987) Pension Scheme

Lansing Linde Executive Pension Scheme

Lansing Linde Pension Scheme



The Chargor

EXECUTED by
 LINDE MATERIAL HANDLING EAST
 LIMITED
 acting by a director in the presence of:

)
)
)
)



Director

Witness: 

Name: KARLA THOMAS

Address: 30 LYMINGTON CLOSE

HATCH WARREN

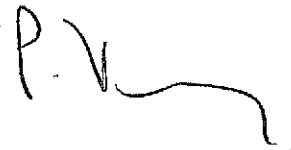
BASINGSTOKE

Occupation: EXECUTIVE ASSISTANT

The Security Trustee

EXECUTED as a DEED by
 FOUR SHARES LIMITED
 acting by a director in the presence of:

)
)
)



Director

Witness: 

Name: KARLA THOMAS

Address: 30 LYMINGTON CLOSE

HATCH WARREN

BASINGSTOKE

Occupation: EXECUTIVE ASSISTANT



Certified to be a true copy of the original

Taylor Wessing LLP
Taylor Wessing LLP (AWW)

DATED

15 August 2012

LINDE MATERIAL HANDLING EAST LIMITED
as Chargor

and

FOUR SHARES LIMITED
as Security Trustee acting as trustee of the Pension Schemes

FLOATING CHARGE

5 New Street Square, London EC4A 3TW
Tel +44 (0)20 7300 7000
Fax +44 (0)20 7300 7100
DX 41 London
www.taylorwessing.com

Taylor Wessing

Index

Clause No.	Page No.
1. Definitions and Interpretation	1
2. Limit of Charging Companies' Liabilities.....	5
3. Floating Security and Negative Pledge	5
4. Debts	6
5. Failure to comply	6
6. Enforcement of Security	6
7. Powers of Receiver and Security Trustee.....	7
8. Delegation of Powers by Security Trustee or Receiver	8
9. Exclusion of Liability	8
10. Reimbursement and Indemnity	9
11. Application of Sums Realised	9
12. Protection of Persons Dealing with Security Trustee or Receiver	10
13. Further Assurance	10
14. Power of Attorney by Chargor	10
15. Protective Provisions	11
16. Discharge of Security	13
17. Redemption	13
18. Miscellaneous	13
19. Law	14
20. Jurisdiction.....	14
SCHEDULE 1	16
SCHEDULE 2	17
SCHEDULE 3	18

THIS FLOATING CHARGE is made on

15 August 2012

BETWEEN

- (1) **LINDE MATERIAL HANDLING EAST LIMITED** (company number 02791930) of Kingsclere Road, Basingstoke, Hampshire RG21 6XJ as chargor (the "**Chargor**"); and
- (2) **FOUR SHARES LIMITED** (company number 7867591) of 5 New Street Square, London EC4A 3TW as security trustee for the Pension Schemes (the "**Security Trustee**").

AGREED TERMS

1. Definitions and Interpretation

1.1 Definitions

In this deed:

"**Charged Property**" means the assets charged or assigned by the Chargor under this deed;

"**Charging Companies**" means each and any of the persons listed in schedule 2 who are granting security or purporting to grant security under the Security Documents and any other person who from time to time grants any security under the Security Documents;

"**Debts**" means all book and other debts and rights to money and income liquidated and unliquidated due or owing to the Chargor including the benefit of all negotiable instruments, securities, guarantees and indemnities for such debts and rights but excluding cash at bank;

"**Enforcement Event**" means both of the following events have occurred and are continuing:

- (a) a Participating Employer of a Pension Scheme has failed to pay any 2009 Recovery Plan Payment to the Pension Schemes on the date on which it is due and payable under the 2009 Schedule of Contributions; and
- (b) such 2009 Recovery Plan Payment is guaranteed by KION under the terms of a Guarantee, the trustees of the relevant Pension Scheme have demanded payment from KION under the relevant Guarantee (to the extent that such 2009 Recovery Plan Payment is guaranteed by the Guarantee) and KION has failed to make such payment when due under the terms of the relevant Guarantee;

"**Finance Documents**" means:

- (a) each 2009 Recovery Plan;
- (b) the Security Documents;

and any other agreement, document or deed entered into or executed and delivered in connection with each 2009 Recovery Plan and/or the Security Documents;

"**Group**" means KION and its Subsidiaries;

"Guarantee" means, for each Pension Scheme, the guarantee dated 15 August 2012ⁱⁿ in respect of such Pension Scheme granted by KION in favour of the trustees of such Pension Scheme;

"Insolvency Act" means the Insolvency Act 1986;

"Insolvency Event" means the presentation of a petition to, or the making of an order by, any court of competent jurisdiction for, or the passing of an effective resolution for, its liquidation, winding-up, administration or dissolution or the levying of any distress or execution on or which affects any material part of its property or assets in each case which has not been discharged within 14 days;

"KION" means KION GROUP GmbH whose corporate seat is located at Abraham-Lincoln Straße 21, 65189 Wiesbaden, Germany HRB 22820 (Lower Court of Wiesbaden);

"LPA" means the Law of Property Act 1925;

"Participating Employers" means the companies listed in schedule 1 to this deed;

"Pension Schemes" means the Lansing Linde Pension Scheme; the Lansing Linde Executive Pension Scheme; the Lansing Linde (Blackwood) (1987) Pension Scheme and the Lansing Linde (Blackwood) Limited Retirement Benefits Plan (and each a "Pension Scheme");

"Permitted Security" means:

- (a) a lien arising in the ordinary course of business by operation of law and discharged as soon as possible and the Security in favour of the Security Trustee; and
- (b) any Security arising under finance leases, hire purchase, conditional sale agreements or other agreements for the acquisition of assets on deferred payment terms, but only:
 - (i) in respect of vehicles (including forklift trucks), other equipment manufactured by the Group, computer and other electronic equipment and point of sale equipment; and
 - (ii) only to the extent such Security is granted by the Chargor over assets comprised within or constituted by such arrangements;

"Receiver" means any one or more persons appointed as a receiver, receiver and manager or administrative receiver under this deed;

"Recovery Plan Payment" means, for each Pension Scheme, any payment that is due, under the schedule of contributions (as that term is defined in section 227 of the Pensions Act 2004), in respect of the recovery plan (as that term is defined in section 226 of the Pensions Act 2004) from time to time in relation to that Pension Scheme;;

"Secured Liabilities" means:

- (a) all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally) of the Participating Employers to make 2009 Recovery Plan Payments to each of their respective Pension Schemes;

- (b) except to the extent the relevant remaining 2009 Recovery Plan Payments are effectively secured under paragraph (a), all obligations of the Chargor to the Security Trustee under clause 6.3 (Cash Cover);
- (c) all costs, fees, taxes, expenses, liabilities and claims whether arising out of contract or in tort or in any other way incurred by the Security Trustee and any Receiver under or in connection with the Security Documents; and
- (d) in the case of any Participating Employer other than the Chargor any obligation referred to in (a) above which is or becomes Unenforceable and any cost, loss or liability which any Pension Scheme incurs as a result of any such Participating Employer not paying any 2009 Recovery Plan Payment on the date when it is due under the 2009 Schedule of Contributions;

"Security" means any mortgage, charge, assignment by way of security, pledge, lien, trust, any form of distress, attachment, execution or other legal process or any other type of encumbrance or security interest or any other type of arrangement (including any sale and lease back or sale and repurchase arrangement) having or intended to have a similar effect;

"Security Documents" means the security documents listed in schedule 3 and any other document which grants security rights or rights by way of guarantee and/or indemnity or other assurance against loss in respect of any liabilities of a Charging Company under the Finance Documents;

"Security Trust and Intercreditor Deed" means the security trust and intercreditor deed to be entered into on or about the date of this deed between the trustees of the Pensions Schemes (1) and the Security Trustee as trustee for the Pension Schemes (2);

"Subsidiary" means a subsidiary undertaking as defined by section 1162 of the Companies Act 2006;

"Trust Property" means:

- (a) all rights and interests of the Security Trustee under or in connection with this deed other than rights solely for the benefit or protection of the Security Trustee;
- (b) all moneys received or recovered by the Security Trustee under or in connection with this deed; and
- (c) any money or property which accrues or derives from the money referred to in (b) above.

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to any trustee of the Pension Schemes or the Chargor) and **"Unenforceability"** will be construed accordingly;

"2009 Recovery Plan" means, for each Pension Scheme, that Pension Scheme's recovery plan dated 16 January 2012 and prepared in accordance with section 226 of the Pensions Act 2004;

"2009 Recovery Plan Payment" means any Recovery Plan Payment that is provided for in the 2009 Recovery Plan for each Pension Scheme; and

"2009 Schedule of Contributions" means, for each Pension Scheme, the Pension Scheme's schedule of contributions dated 16 January 2012 and prepared in accordance with section 227 of the Pensions Act 2004.

1.2 Interpretation

In this deed, unless a contrary indication appears:

- (a) **"obligations"** means obligations and liabilities;
- (b) references to obligations include the whole or any part of them, present and future, actual and contingent;
- (c) any reference to **"powers"** include rights, powers, discretions and authorities;
- (d) any reference to any asset include any proceeds of sale of any such asset;
- (e) references to the **"Security Trustee"** includes their successors, assigns and transferees;
- (f) the expression the **"Chargor"** includes any person deriving title under a Chargor or entitled to redeem the Security created by this deed;
- (g) any reference to a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated from time to time;
- (h) any reference to a provision of law is a reference to that provision as amended or re-enacted from time to time;
- (i) the singular includes the plural and vice versa;
- (j) any reference to clauses, paragraphs and schedules are to the clauses, paragraphs of and schedules to this agreement;
- (k) any reference to **"this clause"** is to the clause headed by a whole number in which such expression appears and includes each sub-clause with a decimal number beginning with the same whole number;
- (l) any reference to any gender includes other genders;
- (m) the words **"including"** and **"in particular"** are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;
- (n) the words **"other"** and **"otherwise"** are not to be construed as being limited by any words preceding them;
- (o) clause and schedule headings are for ease of reference only;
- (p) references to **"liabilities"** includes present and future, actual and contingent liabilities;
- (q) references to **"assets"** includes present and future property, revenues and rights of every description; and

- (r) any undertaking or covenant made by or obligation imposed on the Chargor in this deed will continue in force until the Security Trustee is satisfied that all the Secured Liabilities have been irrevocably paid or discharged in full.

2. Limit of Charging Companies' Liabilities

The total aggregate amount recoverable by the Security Trustee as a result of:

- (a) the enforcement of the Security provided by the Charging Companies under the Security Documents; and
- (b) the Charging Companies, after the occurrence of an Enforcement Event, providing cash cover to the Security Trustee in accordance with the terms of the Security Documents for the then remaining maximum liabilities, currently payable or due to become payable at any future date up to and including March 2018, of the Participating Employers under the 2009 Recovery Plans,

(excluding any fees, costs and expenses recoverable by the Security Trustee from the Charging Companies under the terms of the Security Documents) will not exceed £18,000,000.

3. Floating Security and Negative Pledge

3.1 Floating charge

As continuing security for the payment of the Secured Liabilities the Chargor charges to the Security Trustee by way of floating charge with full title guarantee the whole of its assets.

3.2 Conversion

- (a) Subject to clause 3.3 (Moratorium under Insolvency Act) and paragraph (b) of this clause 3.2 (Conversion), the Security Trustee may by written notice to the Chargor convert the floating charge created by clause 3.1 (Floating Charge) into a fixed charge as regards any assets specified in the notice if:
 - (i) an Enforcement Event has occurred and is continuing; or
 - (ii) such assets are at risk of becoming subject to any Security (other than a Permitted Security) or are otherwise at risk of ceasing to be within the ownership or control of the Chargor.
- (b) The Security trustee shall not convert the floating charge created by clause 3.1 (Floating Charge) into a fixed charge as a result of the Chargor selling, transferring, leasing or otherwise disposing or agreeing to dispose of any of its assets:
 - (i) on arms length terms in the ordinary course of its trading; or
 - (ii) to any other Charging Company, if the relevant assets are, upon completion of the transfer, charged by the floating charge granted by the acquiring Charging Company in favour of the Security Trustee.

3.3 *Moratorium under Insolvency Act*

The Security Trustee shall not be entitled to convert the floating charge created by clause 3.1 (Floating Charge) into a fixed charge as a result only of the Chargor obtaining a moratorium or anything done with a view to obtaining a moratorium under section 1A of and schedule A1 to the Insolvency Act.

3.4 *Qualifying floating charge*

Paragraph 14(2)(a) of schedule B1 to the Insolvency Act applies to the floating charge created by clause 2.1 (Floating charge) which is a "qualifying floating charge" for the purpose of paragraph 14(1) of schedule B1 to the Insolvency Act.

3.5 *Negative pledge*

The Chargor shall not create or permit to subsist any Security over any of the Charged Property other than Permitted Security.

4. **Debts**

The Chargor shall:

- (a) use its reasonable endeavours to realise the Debts;
- (b) from time to time if required by the Security Trustee provide the Security Trustee with a list of the names and addresses of all its debtors and the amount of the Debts owing from each of them and all other information relating to the Debts as the Security Trustee may require; and
- (c) from time to time if required by the Security Trustee execute (subject to clause 2 of this deed being replicated therein as an aggregate sum) a legal assignment of any Debt (securing the Secured Liabilities only) to the Security Trustee in such terms as the Security Trustee may require and (but only after an Enforcement Event has occurred and is continuing) give notice of such assignment to the debtor.

5. **Failure to comply**

If the Chargor fails to comply with any of its obligations under this deed the Security Trustee may take such steps as it considers appropriate to procure compliance with such obligations at the cost of the Chargor.

6. **Enforcement of Security**

6.1 *Security Trustee's powers*

Whilst an Enforcement Event has occurred and is continuing, this deed shall become enforceable and the Security Trustee may immediately or at any time thereafter:

- (a) subject to section 72A of and paragraph 43 of Schedule A1 to the Insolvency Act, appoint one or more persons as a receiver and manager or administrative receiver of any Charged Property; and
- (b) exercise all the powers conferred on a Receiver by this deed, the LPA and the Insolvency Act.

6.2 *Receivers*

After the occurrence of an Enforcement Event which is continuing:

- (a) the Security Trustee may appoint any Receiver upon such terms as to remuneration and otherwise as the Security Trustee thinks fit;
- (b) any Receiver will be the agent of the Chargor for all purposes and the Chargor will be responsible for such Receiver's acts and defaults and for his remuneration, costs, fees, taxes and expenses to the exclusion of liability on the part of the Security Trustee;
- (c) where two or more persons are appointed as Receiver any act authorised to be done by the Receiver may be done by all of them acting jointly or by any one or more of them acting severally; and
- (d) the Security Trustee may at any time by writing remove any Receiver (subject to the obtaining of any required order of the court in the case of an administrative receiver) whether or not the Security Trustee appoints any other person as Receiver in his place.

6.3 *Cash Cover*

After the occurrence of an Enforcement Event which is continuing the Chargor shall, immediately on demand, provide to the Security Trustee full cash cover for the then remaining contributions currently payable or to become payable at any future date up to and including March 2018 under the 2009 Recovery Plans.

7. **Powers of Receiver and Security Trustee**

7.1 *Statutory powers*

A Receiver shall have and be entitled to exercise all the powers conferred on a receiver by the LPA and, whether or not such a Receiver is an administrative receiver, all the powers conferred upon an administrative receiver by Schedule 1 to the Insolvency Act which powers are incorporated in this deed.

7.2 *Additional powers*

By way of addition to and without limiting any other powers referred to in this clause a Receiver shall have power (both before and after the commencement of any liquidation of the Chargor) to do every act and thing and exercise every power:

- (a) which the Chargor would have been entitled to do or exercise if no Receiver had been appointed or which the Receiver would have been entitled to do or exercise if the Receiver were the absolute legal and beneficial owner of the Charged Property;
- (b) which such Receiver in his absolute discretion considers necessary or desirable for maintaining or enhancing the value of any Charged Property or for or in connection with the enforcement of the Security created by this deed or the realisation of any Charged Property;

and may use the name of the Chargor in connection with any exercise of such powers.

7.3 *Prior encumbrances*

At any time after the security given by this deed has become enforceable, the Security Trustee may redeem any prior Security against the Charged Property or procure a transfer of such Security to itself and may agree the accounts of the person entitled to that Security and any accounts so agreed will be binding on the Chargor. Any money paid by the Security Trustee in connection with a redemption or transfer of any prior Security will form part of the Secured Liabilities.

7.4 *Possession*

If the Security Trustee, any Receiver or any delegate of either of them takes possession of any Charged Property it may go out of possession at any time.

8. Delegation of Powers by Security Trustee or Receiver

8.1 *Delegation*

The Security Trustee or any Receiver may from time to time delegate by power of attorney or in any other manner to any person any powers which are for the time being exercisable by the Security Trustee or a Receiver under this deed in relation to any Charged Property and any such delegation may be made upon such terms as the Security Trustee or such Receiver may think fit.

8.2 *Liability for delegates*

Neither the Security Trustee nor any Receiver will be in any way liable or responsible to the Chargor for any loss or damage arising from any act or omission on the part of any such delegate unless such loss or damage is caused by the fraud, gross negligence or wilful misconduct of the delegate.

9. Exclusion of Liability

9.1 *No obligation to recover*

Neither the Security Trustee nor any Receiver is under any obligation to take action to collect any money or enforce any rights comprised in the Charged Property whether or not it is in possession of the relevant Charged Property.

9.2 *Liability as mortgagee in possession*

If the Security Trustee or any Receiver takes possession of any Charged Property, it will not be liable to account to the Chargor for anything except actual receipts or be liable to the Chargor for any loss arising from any realisation of any Charged Property or for any default or omission for which a receiver or mortgagee in possession would be liable.

9.3 *Losses on enforcement*

The Security Trustee or any Receiver will not be liable to the Chargor for any loss or damage arising from:

- (a) any sale of any Charged Property;
- (b) any act, default or omission of the Security Trustee or any Receiver in relation to any Charged Property; or

- (c) any exercise or non-exercise by the Security Trustee or any Receiver of any power conferred upon it in relation to any Charged Property by or pursuant to this deed or by the LPA,

unless such loss or damage is caused by the fraud, gross negligence or wilful misconduct of the Security Trustee or any Receiver.

10. Reimbursement and Indemnity

10.1 Reimbursement

The Chargor shall pay to the Security Trustee on demand:

- (a) any money paid by the Security Trustee or any Receiver:
 - (i) as a result of the Security Trustee or any Receiver taking action which the Security Trustee or any Receiver considers necessary or desirable in connection with any Charged Property or to procure compliance with any obligation of the Chargor in this deed; or
 - (ii) in respect of any action or thing expressed in this deed to be done at the cost of the Chargor;
- (b) all costs, fees, taxes and expenses incurred by the Security Trustee or any Receiver under or in connection with this deed or its enforcement and/or the preservation of the Security Trustee's rights under this deed.

10.2 Indemnity

The Chargor shall indemnify each of the Security Trustee and any Receiver against all liabilities, claims and expenses whether arising out of contract or in tort or in any other way which it may at any time incur in connection with this deed or for anything done or omitted to be done in the exercise or purported exercise of its powers pursuant to this deed unless such liabilities, claims and expenses are caused by its fraud, gross negligence or wilful misconduct.

11. Application of Sums Realised

11.1 Order of application

Subject to claims having priority to the Security created by this deed all money recovered by the Security Trustee or any Receiver as a result of the enforcement of this deed or otherwise by reason of the Security created by this deed will be applied in the following order:

- (a) in payment of all costs, fees, taxes and expenses incurred by the Security Trustee or any Receiver in or pursuant to the exercise of the powers set out in this deed and all other outgoings properly payable by any Receiver;
- (b) in payment of remuneration to any Receiver;
- (c) in or towards payment to the Security Trustee for application towards the Secured Liabilities; and
- (d) the balance (if any) will be applied as required by law.

11.2 *Contingent or future liabilities*

If any money is received by the Security Trustee or a Receiver as a result of the enforcement of this deed or otherwise by reason of the Security created by this deed at a time when the Secured Liabilities include contingent or future liabilities the Security Trustee or any Receiver may hold some or all of such money in a suspense account.

12. Protection of Persons Dealing with Security Trustee or Receiver

No person dealing with the Security Trustee or any Receiver will be concerned to enquire:

- (a) whether any event has happened upon which any of the powers conferred by this deed may have arisen or be exercisable;
- (b) otherwise as to the propriety or regularity of any exercise of the powers conferred by this deed or of any act purporting or intended to be in exercise of such powers; or
- (c) whether any Secured Liabilities remain owing.

13. Further Assurance

When required by the Security Trustee or any Receiver the Chargor shall, at its own cost:

- (a) execute a charge by way of legal mortgage, assignment by way of security or fixed charge over any assets of the Chargor and such legal mortgage, assignment or charge shall secure the Secured Liabilities and contain a power of sale which arises immediately upon execution, provisions excluding section 93 of the LPA and the restrictions contained in section 103 of the LPA and such other provisions including any similar to those in this deed as the Security Trustee may reasonably require;
- (b) execute any documents or do any other thing which the Security Trustee or any Receiver may require for perfecting or protecting any Security created by this deed or in connection with the exercise of any powers given to the Security Trustee or any Receiver under this deed; and
- (c) convey, transfer, assign or otherwise deal with any Charged Property in such manner as the Security Trustee or any Receiver may require in connection with any enforcement of any Security created by this deed.

14. Power of Attorney by Chargor

The Chargor irrevocably and by way of security appoints each of the Security Trustee, any person selected by the Security Trustee and any Receiver or their attorney in each case (with full power to appoint substitutes and to delegate) severally in its name and on its behalf to execute any document or do any act or thing which:

- (a) the Chargor is entitled to execute or do in relation to the Charged Property including giving a receipt for any money and exercising any rights or remedies forming part of the Charged Property; or
- (b) the Chargor is obliged to execute or do under this deed.

15. Protective Provisions

15.1 Waiver of defences

The obligations of the Chargor under this deed and the security constituted by this deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of such obligations or security including (whether or not known to it or any trustee of the Pension Schemes):

- (a) any time, waiver or consent granted to, or composition with, any other Participating Employer or other person;
- (b) the release of any other Participating Employer or any other person under the terms of any composition or arrangement with any creditor of any Participating Employer;
- (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 property of, any other Participating Employer or other person or 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;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Participating Employer or any other person;
- (e) any amalgamation, merger or reconstruction of any Pension Scheme with any other person or any sale or transfer of the whole or any part of the assets of any Pension Scheme to any other person;
- (f) the existence of any claim, set-off or other rights which any other Participating Employer may have at any time against any Pension Scheme, whether in connection with the Finance Documents or otherwise;
- (g) any novation, amendment (however fundamental) or replacement of any 2009 Recovery Plan or any other document or security;
- (h) any obligation of any person under any Finance Document or any other document or security being unenforceable; or
- (i) any insolvency or similar proceedings.

15.2 Chargor Intent

Without prejudice to the generality of clause 15.1 (Waiver of defences), the Chargor expressly confirms that it intends that the security created by this deed shall:

- (a) extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents (other than any 2009 Recovery Plan);
- (b) not extend to any variation, increase, extension or addition of or to any 2009 Recovery Plan; and
- (c) not extend to any future recovery plan prepared in accordance with section 226 of the Pensions Act 2004.

15.3 *Immediate recourse*

Whilst an Enforcement Event is continuing, the Chargor waives any right it may have of first requiring the Security Trustee to proceed against or enforce any other rights or security or claim payment from any person before enforcing the security constituted by this deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

15.4 *Appropriations*

Until the Secured Liabilities have been irrevocably paid in full or the cap on the amount recoverable by the Security Trustee under the Security Documents pursuant to clause 2 (Limit of Charging Companies' Liabilities) has been reached, the Security Trustee may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Security Trustee in respect of the Secured Liabilities, or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any money received under this deed.

15.5 *Deferral of Chargor's rights*

Until the Secured Liabilities have been irrevocably paid in full or the cap on the amount recoverable by the Security Trustee under the Security Documents pursuant to clause 2 (Limit of Charging Companies' Liabilities) has been reached and unless the Security Trustee otherwise directs, the Chargor will not exercise any rights which it may have by reason of the enforcement of this deed:

- (a) to be indemnified by any Participating Employer;
- (b) to claim any contribution from any other Participating Employer or any other person in respect of any obligations of that person under any Recovery Plan;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Participating Employer under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Pension Scheme;
- (d) to bring legal or other proceedings for an order requiring any Participating Employer to make any payment, or perform any obligation, in respect of which the Chargor has given security under this deed;
- (e) to exercise any right of set-off against any Participating Employer; and/or
- (f) to claim or prove as a creditor of any Participating Employer in competition with any Pension Scheme.

15.6 *Turnover*

If the Chargor receives any benefit, payment or distribution in relation to the rights referred to in clause 15.5 (Deferral of Chargor's rights) it shall hold that benefit, payment or distribution to the extent necessary to enable the Secured Liabilities to be repaid in full or to allow the cap on the amount recoverable by the Security Trustee under the Security Documents pursuant to clause 2 (Limit of Charging Companies' Liabilities) to be reached.

Liabilities) to be reached on trust for the Security Trustee as trustee for the Pension Schemes and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application as provided in clause 11 (Application of Sums Realised).

16. Discharge of Security

16.1 Discharge conditional

Any discharge of the Chargor by the Security Trustee in reliance on a payment or security received by the Security Trustee will cease to be effective if that payment or security is avoided, reduced or invalidated for any reason and the Security Trustee will be entitled to recover from the Chargor on demand the amount of the Secured Liabilities discharged by such payment or security.

16.2 Retention of security

Following any discharge of the Chargor made by the Security Trustee in reliance on a payment or security the Security Trustee may retain the security constituted by this deed until the expiry of the maximum period within which such payment or security can be avoided, reduced or invalidated for any reason. If the person making such payment or giving such security goes into liquidation or administration or equivalent proceedings in any foreign jurisdiction within that period the Security Trustee may retain the security constituted by this deed for as long as it thinks fit.

17. Redemption

If:

- (a) the Security Trustee has recovered the aggregate maximum amount recoverable by the Security Trustee under the Security Documents pursuant to clause 2 (Limit of Charging Companies' Liabilities);
- (b) the Secured Liabilities have been repaid or discharged in full; or
- (c) the Pension Scheme's actuary certifies that the Pension Schemes have sufficient and appropriate assets to cover its technical provisions in accordance with the statutory funding objective and section 222 of the Pensions Act 2004,

then the Security Trustee will at the request and cost of the Chargor release the Charged Property from the Security created by this deed and release the Chargor from all of its obligations under this deed.

18. Miscellaneous

18.1 Security Trustee

- (a) The Security Trustee enters into this deed as agent and trustee for the Pension Schemes and holds the subject of this deed as trustee for the Pension Schemes on the terms set out in the Security Trust and Intercreditor Deed.
- (b) The Security Trustee will act as security agent and trustee under the Security Documents and will hold the Trust Property on trust for the Pension Schemes

and deal with it as provided for in this deed and in accordance with the terms of the Security Trust and Intercreditor Deed.

- (c) If there is any conflict or inconsistency of the terms of the Security Trustee's appointment, rights, powers, authority or discretions as between the Security Trust and Intercreditor Deed and this deed, the terms of the Security Trust and Intercreditor Deed shall prevail.

18.2 *Third Party Rights*

A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this deed.

18.3 *Continuing Security*

This deed is a continuing security and extends to the balance from time to time of the Secured Liabilities irrespective of any intermediate payment of monies due to the Security Trustee.

18.4 *Other Security*

This deed is in addition to and will not in any way be prejudiced or affected by the holding or release by the Security Trustee or any other person of any other security at any time held by the Security Trustee.

18.5 *Consolidation*

The restrictions on the right of consolidating mortgage securities contained in section 93 of the LPA will not apply to this deed.

18.6 *Counterparts*

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

19. **Law**

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

20. **Jurisdiction**

- (a) 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 and a dispute regarding a non-contractual obligation referred to in clause 19 (Law)) (a "**Dispute**").
- (b) The Security Trustee and the Chargor agree that the courts of England are the most appropriate and convenient courts to settle Disputes. The Chargor will not argue to the contrary.
- (c) This clause is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

This deed has been executed and delivered as a deed on the date shown at the beginning of this deed.

SCHEDULE 1

Participating Employers in the Pension Schemes

Lansing Linde (Blackwood) Ltd Retirement Benefits Plan

Linde Heavy Truck Division Ltd

Lansing Linde (Blackwood) (1987) Pension Scheme

Linde Heavy Truck Division Ltd

Lansing Linde Executive Pension Scheme

Linde Material Handling (UK) Ltd

Lansing Linde Pension Scheme

Linde Material Handling (UK) Ltd

Linde Material Handling Scotland Ltd

Linde Sterling Ltd

Linde Material Handling East Ltd

Linde Severnside Ltd

SCHEDULE 2

Charging Companies

Linde Castle Limited
Linde Jewsbury's Limited
Linde Material Handling East Limited
Linde Material Handling Scotland Limited
Linde Material Handling South East Limited
Linde Severnside Limited
KION Financial Services Limited

SCHEDULE 3

Security Documents

1. This deed.
2. Each floating charge dated on or about the date of this deed and entered into between each Charging Company other than the Chargor in favour of the Security Trustee.
3. The Scottish law standard security entered into or to be entered into between Linde Material Handling Scotland Limited in favour of the Security Trustee in respect of the property known as 3 Milton Road, College Milton, East Kilbride, Glasgow, Lanarkshire G74 5DH.
4. The security agreement entered into or to be entered into between Linde Severnside Limited in favour of the Security Trustee, providing legal mortgages over the properties known as North Road, Bridgend Industrial Estate, Bridgend CF31 3SZ and Western Avenue, Bridgend Industrial Estate, Bridgend CF31 3SZ.
5. The security agreement entered into or to be entered into between Linde Castle Limited in favour of the Security Trustee, providing a legal mortgage over the property known as Linde Way, Aycliffe Industrial Park, Newton Aycliffe, Durham DL5 6HR.

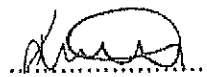
THE CHARGOR

EXECUTED
by LINDE MATERIAL HANDLING
EAST LIMITED
acting by a director in the presence of:

)
)
)
)



Director

Witness: 

Name: K. CRESSWELL

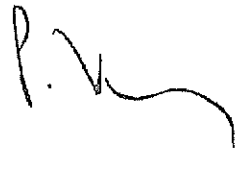
Address: 108 CHARTERED WAY
BOSTON

Occupation: R23 SH
PA to CEO

THE SECURITY TRUSTEE

EXECUTED as a deed
by FOUR SHARES LIMITED
acting by a director in the presence of:

)
)
)



Director

Witness: 

Name: K. CRESSWELL

Address: AS ABOL

.....

.....

Occupation: AS ABOL