

MR01

Particulars of a charge



Companies House



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A fee is be payable
Please see 'How to

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument.

☐ **What this form is for**
You may not use this form to
register a charge which is not
instrument. Use form

FRIDAY



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LD2 05/01/2018 #1
COMPANIES HOUSE

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This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.



You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

1

Company details

Company number 0 9 6 5 9 8 5 9
Company name in full STEMCOR LONDON TRADING LIMITED

For official use

→ Filling in this form

Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by *

2

Charge creation date

Charge creation date d 2 d 0 m 1 m 2 y 2 y 0 y 1 y 7

3

Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name DBS BANK LTD

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below.

☐ I confirm that there are more than four persons, security agents or trustees entitled to the charge.

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4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Brief description

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☒ **Yes**

☐ **No**

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☒ **Yes** Continue

☐ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ **Yes**

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ **Yes**

☐ **No**

8

Trustee statement ^①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

^① This statement may be filed after the registration of the charge (use form MR06).

9

Signature

Please sign the form here.

Signature

Signature

X

Sullivan & Harcourt UK LLP

X

This form must be signed by a person with an interest in the charge.

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Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name	NAGIA PARASCHOU
Company name	SULLIVAN & WORCESTER UK LLP
Address	TOWER 42, FLOOR 36
25 OLD BROAD STREET	
Post town	LONDON
County/Region	LONDON
Postcode	E C 2 N 1 H Q
Country	UNITED KINGDOM
DX	
Telephone	020 7448 1021



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For companies registered in Scotland:
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9659859

Charge code: 0965 9859 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th December 2017 and created by STEM COR LONDON TRADING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th January 2018.

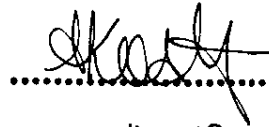
Given at Companies House, Cardiff on 9th January 2018



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



DATE: 4-1-18

DEED OF CHARGE AND ASSIGNMENT

THIS DEED is made on 20 December 2017

BY

- (1) **Stemcor London Trading Limited**, a company incorporated under the laws of England and Wales and having its registered office at Longbow House, 14-20, Chiswell Street London, EC1Y 4TW, England (the "**Company**");

IN FAVOUR OF

- (2) **DBS BANK LTD.**, a company incorporated under the laws of Singapore and having its registered office at 12 Marina Boulevard, Marina Bay Financial Centre Tower 3, Singapore 018982 and operating through its London branch at 4th Floor, Paternoster House, 65 St. Paul's Churchyard, London EC4M 8AB (the "**Bank**").

1. Interpretation

- 1.1 In this Deed, except so far as the context otherwise requires:

"**the Act**" means the Law of Property Act 1925;

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

"**Bank Account**" means the current account maintained by the Company with the Bank with such account number as may be notified by the Bank to the Company from time to time or any other current, deposit or other accounts with the Bank or any branch of the Bank in which the Company now or in the future has an interest (including all and any credit balances now or in the future standing in credit in each Bank Account, together with all interests earned thereon);

"**Charged Property**" means the property, assets and rights which are financed by the Bank under the Financing Documents for the time being comprised in or subject to the Security Interest created pursuant to this Deed; and references to the Charged Property include references to any part of it;

"**Collateral Instruments**" means negotiable and non-negotiable instruments, guarantees and any other documents or instruments relating to the Goods or Receivables financed by the Bank under the Financing Documents which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing a Security Interest;

"**Contract Rights**" means all and any rights of the Company in, under and to each Relevant Document, including without limitation:

- (a) all rights to delivery of any quantity of Goods under any Goods Agreement;
- (b) all rights to any sum or sums of money (whether in the nature of debt, purchase price, damages liquidated or unliquidated, or otherwise) under any Goods

Agreement, and all and any such sums when paid; and

- (c) all rights in or to the proceeds of any Insurance payable or paid in respect of the Goods;

"Deed" means this deed of charge as amended, modified or supplemented from time to time and includes any document or deed which amends, modifies or supplements this deed of charge;

"Delegate" means a delegate or sub-delegate appointed under Clause 6.8;

"Event of Default" means any event described as an Event of Default or a Termination Event (as the case may be) in any of the Financing Documents and includes any event, howsoever described, which may render the Secured Amounts or any part of it to become due and payable before its normal maturity;

"Facility Letter" means the facility letter dated on or about the date of this Deed and made between (amongst others) the Bank and the Company.

"Financing Documents" means the Facility Letter, and the related standard terms and conditions executed or accepted by the Company and any other document or agreement (including, without limitation, any loan, credit or other agreement) related to the Facility Letter now or hereafter from time to time entered into, under or pursuant to which any moneys or liabilities whatsoever may, at any time (now or hereafter), be due, owing or payable by the Company to the Bank in relation to the Goods and Receivables, whether actually or contingently, solely or jointly and/or severally with another or others or as principal or as surety or otherwise under or in connection with any banking or credit facilities or accommodation of any kind extended by the Bank,

"Goods" means all and any goods and any right, title or interest of the Company therein now or in the future purchased or to be purchased by the Company, in respect of which any payment has been or may fall to be made by the Bank pursuant to any letter of credit or payment undertaking now or in the future issued by the Bank, or in respect of or to facilitate the purchase of, and for which the Bank has extended or hereafter extends to the Company any banking or credit facilities or accommodation of any kind under the Financing Documents;

"Goods Agreement" means the Goods Sale Agreement and the Goods Purchase Agreement;

"Goods Purchase Agreement" means any agreement now or in the future entered into by or on behalf of the Company with any person or persons for the purchase or acquisition of Goods from a third party being a contract which has been financed wholly or in part directly or indirectly by the Bank under the Financing Documents, whether by the issue or confirmation of a guarantee, letter of credit, payment undertaking, the making of cash advances, the acceptance or discount of bills or otherwise howsoever;

"Goods Sale Agreement" means any agreement now or in the future entered into by or on behalf of the Company with any person or persons for the sale or other disposal of Goods which were purchased under a Goods Purchase Agreement;

"Insurances" means all contracts and policies of insurance of any kind now or in the future taken out by or on behalf of the Company or (to the extent of its interest) in which it now or

in the future has an interest in respect of the Goods and/or Goods Purchase Agreement and/or Goods Sale Agreement;

"Letter of Credit" means a letter of credit or other payment undertaking issued, transferred or confirmed in favour of the Company in respect of the payment to the Company of the price under a Goods Sale Agreement;

"Letter of Indemnity" means a letter of indemnity or guarantee issued in favour of, or for the account of, the Company by or on behalf of the seller of any produce or goods the subject of a Goods Purchase Agreement in respect of any or all losses, costs, charges, expenses, liabilities, claims and demands which may be incurred by or made against the Company as a consequence of payment being made by or for the account of the Company to or for the account of the seller in respect of such produce or goods in circumstances where no bill of lading or other document of title relating thereto shall have been delivered to or to the order of the Company;

"powers" in relation to the Bank and the Receiver, means their respective powers, discretions and rights under this Deed, any other document or the general law;

"Receiver" means the receiver appointed by the Bank under this Deed or the Bank's statutory powers, and may include more than one such receiver and any person or persons (including any officer or officer of the Bank) appointed by the Bank under Clause 7.1;

"Receivables" means all book and other debts of any nature and all moneys payable now or in the future to or for the account of the Company related to Goods which have been financed under the Finance Documents, and all other rights to receive money arising out of, as a result of, pursuant to or under or in connection with:

- (a) each present and future Goods Sale Agreement including, without limitation, the sales proceeds of the produce or goods which are the subject of each Goods Sale Agreement, all claims for damages arising out of any breach of any Goods Sale Agreement and all insurance moneys which may be or become payable to the Company under any insurances relating to any Goods Sale Agreement;
- (b) each present and future Letter of Indemnity including, without limitation, all claims for damages arising out of any breach of any Letter of Indemnity;
- (c) any and all present and future Wash-Out Rights;
- (d) each present and future Goods Purchase Agreement including, without limitation, all claims for damages arising out of any breach of any Goods Purchase Agreement;
- (e) each present and future Letter of Credit;
- (f) each present and future Insurance and all proceeds in respect of Insurances and all benefits of Insurances (including all claims relating to, and all returns of premium in respect of, Insurances);
- (g) any present or future claim which the Company may have against a carrier of any Goods, whether under or pursuant to a bill of lading or otherwise; and
- (h) all present and future things in action which may give rise to any debt, revenue or

claim under or pursuant to any property referred to in (a) to (g) above inclusive, together with the full benefit of any Collateral Instrument and any other rights relating to any such property including, without limitation, reservations of proprietary rights, rights of tracing and unpaid vendor's liens and associated rights;

"Relevant Document" means the Goods Agreement, Insurances, Letter of Credit, Letter of Indemnity and Wash-Out Agreement;

"Secured Amounts" means all present and future moneys and liabilities which the Company covenants in Clause 2 to pay or discharge; and references to the Secured Amounts include references to any of them;

"Security Interest" means any mortgage, charge, assignment, pledge, lien, right of set-off, guarantee, indemnity or other security interest securing any obligation of any person whatsoever, or any other agreement or arrangement having a similar effect, howsoever created or arising;

"Wash-Out Agreement" means any wash-out, book-out, circle settlement, netting or other similar agreement or arrangement (by whatever name called) related to the Goods, a Goods Sale Agreement or a Goods Purchase Agreement pursuant to which the rights and obligations of parties to two or more contracts for the sale and purchase of a particular commodity are effectively cancelled and substituted by new payment obligations (whether the paying party is a seller or a buyer) calculated by reference to the sale prices agreed in such contracts; and

"Wash-Out Rights" means any and all rights from time to time vested in, or accruing to, the Company as a consequence of the operation of any Wash-Out Agreement.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to the Company and to the Bank include references to the persons deriving title under them respectively, permitted assigns and permitted transferees;
- (b) references to clauses and schedules are references to clauses of, and the schedules to, this Deed and references to this Deed include the schedules;
- (c) clause headings are for convenience of reference only and shall not affect the construction of this Deed;
- (d) words importing the plural shall include the singular and vice versa;
- (e) references to a "guarantee" include references to an indemnity or other assurance against financial loss including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any indebtedness and "guaranteed" shall be construed accordingly;
- (f) any reference to a Relevant Document shall include that Relevant Document as amended, modified or supplemented from time to time and any document which amends, modifies or supplements that Relevant Document;
- (g) references to statutes shall include any re-enactment or modification thereof from time to time in force.

- (h) references to a receiver include a manager, and also a receiver and manager, judicial manager or other manager appointed in respect of the Charged Property;
- (i) references to a person includes an individual, any body or association, corporate or unincorporated, government, state or agency of a state or any association and any firm or partnership; and
- (j) references to a document includes any deed, instrument (including a negotiable instrument) or other document of any kind.

2. Covenant to pay Secured Amounts

- 2.1** In consideration of the Bank agreeing to make or continuing to make advances or otherwise giving credit or affording banking facilities or other accommodation to the Company under the Financing Documents, the Company covenants with the Bank upon demand, to pay or discharge to the Bank all moneys and liabilities whatsoever which now are or at any time hereafter (whether on or after any such demand) may be due, owing or payable, in any currency, to the Bank by the Company under the Financing Documents, actually or contingently, solely or jointly and/or severally with another or others, as principal or surety, on any account, with reference to any bill, note or other security, in connection with any advance, loan or credit extended by the Bank, or in connection with any guarantee or indemnity made or issued to or at the request of the Company under the Financing Documents, or in any other manner whatsoever, including commission, discount and all banking, legal and other costs, charges and expenses whatsoever (on a full indemnity basis), and also interest on the foregoing and so as to include also any moneys or liabilities owing or payable under this Deed.
- 2.2** Interest payable under Clause 2.1 shall be computed and compounded according to the usual practice for the time being of the Bank and shall be payable as well after as before any demand made or judgment obtained under this Deed.

3. Charge and Assignment

- 3.1** The Company, as legal and/or beneficial owner and as a continuing security for the due and punctual payment and discharge of all the Secured Amounts:
- (a) charges to the Bank by way of first floating charge all its right, title, benefit, and interest in and to all Goods;
 - (b) charges to the Bank by way of first fixed charge all its right, title, benefit and interest in and to all Bank Accounts;
 - (c) assigns and charges to the Bank by way of first fixed security all Receivables and the benefit of any Security Interest held by the Company in respect of any such Receivables;
 - (d) assigns and charges to the Bank by way of first fixed security all Contract Rights and the benefit of any Security Interest held by the Company in respect of any such Contract Rights;
 - (e) assigns and charges to the Bank by way of first fixed security all its right, title, benefit and interest under the Letters of Credit, and in respect of which the

Company has requested or may hereafter request to the Bank to act or where the Bank has acted as the collecting, negotiation and/or nominated bank together with the full benefit of all rights enabling the Company to collect payment under the Letters of Credit; and

- (f) pledges and agrees to pledge and/or surrenders and agrees to surrender to the Bank the Goods and all invoices, documents of title (including, without limitation, bills of lading), shipping documents, transport documents, delivery orders, warehouse warrants, certificates or receipts and other documents of whatever nature which relate to the Goods (or any part of them) or which are, or are required to be hereafter presented by the Company to the Bank as the collecting, negotiation and/or nominated bank or which are now or may in the future be deposited or lodged with or otherwise in the possession of or transferred to or warehoused or stored in the name of the Bank or its agents or nominees or otherwise held by it or to its or their order or under its or their control, whether for safe custody, security or for any specific purpose or generally.

3.2 In respect of the assets financed by the Bank under the Financing Documents only, the Company, as legal and/or beneficial owner and as continuing security for the due and punctual payment and discharge of all the Secured Amounts, charges in favour of the Bank by way of *first floating charge all such assets expressed to be charged or assigned* by Clause 3.1 other than any asset from time to time or for the time being, effectively charged by way of fixed charge or assignment by Clause 3.1.

3.3 The floating charge created over all or any of the Charged Property pursuant to this Deed ranks:

- (a) behind all the fixed charges created by the Company; but
- (b) in priority to any other Security Interest over the Charged Property of the Company except for Security Interest ranking in priority in accordance with Clause 7.6(g).

3.4 The floating Charge created pursuant to this Deed shall automatically and without notice be converted into a fixed charge in respect of any Charged Property in the event:

- (a) such Charged Property becomes subject to any Security Interests, encumbrances or claims other than that permitted under this Deed;
- (b) any person levies or notifies the Company that it intends to levy any distress, execution, sequestration or other process against any Charged Property;
- (c) the Company ceases to carry on business or to be a going concern;
- (d) the Company for any reason fails to observe or punctually perform any of its obligations to the Bank;
- (e) the Company becomes or is unable to pay its debts as they fall due, or suspends or threatens to suspend making payments (whether of principal or interest) with respect to all or any class of its debts or otherwise becomes or is declared insolvent;

- (f) a resolution is passed or an order is made for the winding-up of the Company;
- (g) any person (who is entitled to do so) gives notice of its intention to appoint a judicial manager to the Company or files such a notice with the court; or
- (h) an Event of Default has occurred.

3.5 The Company's rights to repayment or withdrawal of any moneys standing to the credit of any Bank Account or any part thereof shall be conditional upon discharge of all actual and contingent liabilities of the Company comprised in the Secured Amounts, and its rights against the Bank in relation to the Bank Accounts shall be contingent accordingly. Absent agreement to the contrary, the Bank shall be entitled to renew any fixed or time deposit comprised in any moneys standing to the credit of any Bank Account upon its maturity for such period or periods as it may choose if and for so long as such contingency has not been fulfilled.

3.6 The Company shall forthwith deliver possession (actual, constructive or otherwise) of the Goods to the Bank or such other party for and on behalf of the Bank as may be instructed by the Bank.

3.7 Where the Goods have been pledged to the Bank and are to be delivered or handed over by the Bank to the Company, they shall be received by the Company only (a) against the delivery by the Company of trust receipts (in accordance with the Bank's normal banking practice and in the form as may be required by the Bank) or if trust receipts are not delivered, the goods shall nevertheless be treated as if they are received by the Company against trust receipts; (b) as trustee and agent of the Bank, and if the Company shall receive any sale proceeds, it shall receive such proceeds on trust for, and as agent of, the Bank and not otherwise.

3.8 The Company authorises the Bank, in order to recover all or any of the moneys from time to time outstanding in respect of the Secured Amounts:

- (a) to combine or consolidate all or any of the Company's accounts (whether current, deposit or any other type of account and whether held by the Company in its own name or jointly with others, wheresoever situate, whether in the United Kingdom or elsewhere);
- (b) to set-off or transfer any sum standing to the credit of any such account and to apply the same in or towards satisfaction of the Secured Amounts; and
- (c) where necessary, to convert (at the Bank's prevailing rates and otherwise on its normal terms for such business) the moneys standing to the credit of such accounts into the currencies in which the Secured Amounts are denominated.

4. Representations and Warranties

4.1 In addition to the warranties and representations by the Company in the Financing Documents, the Company hereby warrants and represents to the Bank that:

- (a) save for any Security Interest created under this Deed and Security Interests arising or existing under any other financing to any entity in the corporate group of the Company for which the Bank is also a lender, none of the Charged Property is affected by any Security Interest, and the Company is not a party to, nor is it

bound by, any order, agreement or instrument under which the Company is, or may be, required to create, assume or permit to arise any Security Interest over the Charged Property;

- (b) the Company has full legal title to the Charged Property, free from all Security Interests and claims whatsoever;
- (c) each Relevant Document and the obligations expressed to be assumed by the Company under this Deed will constitute legal, valid and binding obligations of the parties thereto in accordance with their respective terms, will be in full force and effect, and no party is or will be in default thereunder or has asserted or will assert any right of termination or rescission whatsoever thereunder;
- (d) the entry into and performance by it of this Deed, and the transactions contemplated by, this Deed do not and will not conflict with any law or regulation applicable to it, its constitutional documents, any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described), or (except as provided in this Deed) result in the existence of, or oblige it to create, any Security Interest over any of its or any of its assets;
- (e) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Deed and the transactions contemplated hereunder;
- (f) all Authorisations required (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed, (ii) to make this Deed admissible in evidence, and (iii) to enable it to create the Security Interest pursuant to this Deed and, to ensure that such Security Interest has the priority and ranking in this Deed, have been obtained or effected, are in full force and effect and have not been or will not be revoked;
- (g) no meeting has been convened for the Company's winding-up or for the appointment of a receiver, trustee, judicial manager or similar officer of the Company, the Company's assets or any of them, no such step is intended by the Company and no petition, application or the like is outstanding for the Company's winding-up or for the appointment of a receiver, trustee, judicial manager or similar officer of the Company, the Company's assets or any of them; and
- (h) none of the Charged Property is the subject of any claim, assertion, infringement, attack, right, action or other restriction or arrangement of whatever nature which does or may impinge upon the validity of the Charged Property or upon the ownership, enforceability or enjoyment of the Charged Property by it.

4.2 Each of the above representations and warranties will be correct and complied with in all respects as long as the Secured Amounts remain payable as if repeated then by reference to the then existing circumstances.

5. General Covenants

5.1 The Company undertakes with the Bank that until the Secured Amounts have been repaid or discharged in full to the satisfaction of the Bank:

- (a) not to create, or permit to exist upon or affect any of the Charged Property any

Security Interest (other than Security Interests arising or existing under any other financing to any entity in the corporate group of the Company for which the Bank is also a lender) in favour of any person other than the Bank, which ranks, or may come to rank, in priority to or pari passu with the Bank's security under this Deed or, except with the prior written consent of the Bank, any Security Interest which will rank after the Bank's security under this Deed;

- (b) except with the prior written consent of the Bank, not to lease, licence, sub-licence, transfer, sell, lend or otherwise dispose of any of the Charged Property, **Provided that** the Company may without breach of obligation under this Clause 5.1(b) but subject and without prejudice to the provisions of this Deed and to any pledge or other Security Interest subsisting in favour of the Bank, enter into agreements for the sale of Goods by way of arm's length transaction with normal commercial terms in the usual course of the Company's day-to-day trading;
- (c) except with the prior written consent of the Bank, not to assign, transfer, factor, discount, sell, release, compound, subordinate, defer, or vary the terms of the Receivables or any book or other debts or moneys for the time being due, owing or payable to the Company in respect of the Relevant Documents;
- (d) to collect in the ordinary course of its business in a proper and efficient manner and pay into the Bank Accounts or such other account of the Company with the Bank as the Bank may from time to time specify, the Receivables and all moneys which it may receive in respect of the Relevant Documents forthwith on receipt, and except with the prior written consent of the Bank, not to negotiate, compromise, abandon or settle any claim for compensation (whether payable under any enactment or otherwise) under or arising out of any breach or alleged breach of obligations under any Relevant Document, or any other agreement under which the Receivables or such book or other debts or moneys arise to be paid to the Company or any claim under any Insurance in respect of any of the Charged Property, or waive its right of action in connection therewith or do or omit to do anything which may delay or prejudice the full recovery thereof **Provided that** this Clause 5.1(d) shall not of itself prevent the Company from entering into, or acquiescing in, any Wash-Out Agreement so long as the Wash-Out Rights deriving therefrom become subject to the Charge hereby created;
- (e) to deposit with the Bank upon request an original duly executed copy of all Relevant Documents promptly upon the same being made, provide the Bank promptly with full particulars of all Relevant Documents and their performance including, without limitation, the detailed terms and conditions (if any) applicable thereto, and, to promptly deliver to the Bank a copy of all notices given or received under any Relevant Document;
- (f) notify the Bank forthwith of any proposal for the amendment or variation of the terms of any Relevant Document including, without limitation, any proposed Wash-Out Agreement except for any proposal or variation to correct an administrative error;
- (g) not without the prior written consent of the Bank terminate, amend or vary, or acquiesce in any amendment or variation of, any Relevant Document, or release

any party from its obligations thereunder or waive any breach of obligations by any other party thereto or do or permit, or omit to do or permit the omission of, any act or thing as a result of which any Relevant Document is or may be frustrated or may lawfully be terminated, withdrawn or cancelled by any except for any amendment or variation to correct an administrative error;

- (h) duly perform and observe all its obligations under this Deed and each Relevant Document, promptly present invoices and the other specified documents for payment in accordance with each Relevant Document and promptly inform the Bank of any occurrence of any event which the Company becomes aware which might adversely affect its ability to perform any of such obligations;
- (i) to notify the Bank forthwith in writing of any breach by any third party of any of their obligations under or in relation to a Relevant Document or any notice or information received by the Company concerning any breach or alleged breach or termination or threatened or proposed termination of any Relevant Document and take all such action as may from time to time be necessary or desirable (including where appropriate the institution of legal proceedings) to enforce the performance by such third party of such obligations;
- (j) ensure that all Letters of Indemnity issued to or for the benefit of the Company contain provisions substantially to the effect of the matters specified in Schedule 2;
- (k) not do or cause or permit to be done anything which may in any way depreciate, jeopardize or otherwise prejudice the value to the Bank of the Security Interest created by this Deed and or the collectability of any of the Receivables;
- (l) if the Bank so requires, promptly to execute, at the Company's own cost, as a continuing security for the payment or discharge of the Secured Amounts, a first legal mortgage, charge or assignment, in terms specified by the Bank, of all or any of the Charged Property;
- (m) to maintain such Insurances in respect of the Charged Property in names, on terms and with insurers acceptable to the Bank, as the Bank may from time to time require, punctually to pay all premiums and other sums payable in respect of all Insurances effected by the Company and to produce to (or, if required, deposit with) the Bank on demand all or any of the relevant policies and the receipts for the last premiums payable, and to hold any moneys payable to or received by the Company on any Insurance upon trust to apply them either in replacing the Charged Property in respect of which the moneys are received or (as the Bank may require) in or towards discharging the Secured Amounts, to the intent that such moneys shall (without prejudice to any other right or interest of the Bank therein) be comprised in the Charged Property;
- (n) to allow the Bank (and any persons appointed in writing by the Bank) full access to the Goods to carry out any survey or inspection;
- (o) to maintain or effect all governmental licenses, authorisations, consents, registrations, filings or approvals at any time necessary or desirable to enable the Company to comply with and/or perform its obligations under this Deed and each

Relevant Document;

- (p) punctually to pay all governmental or other taxes, duties, rates and outgoings assessed upon or payable with reference to the Charged Property, and punctually to discharge all liabilities which by the general law would rank or might come to rank in priority to any of the Security Interest created pursuant to this Deed;
- (q) keep or cause to be kept all its Charged Property in good repair and good working order and condition, ordinary wear and tear excepted, and shall promptly take all action which is at any time necessary and desirable to protect the value of its and the Bank's interest in and rights to the Charged Property; and
- (r) to do all such things as may be necessary or appropriate to preserve or protect the rights and interests of the Bank created by, or arising from, this Deed.

5.2 The Company undertakes to the Bank that it shall:

- (a) if the Bank so requests, give notice of this Deed to the seller under each Goods Purchase Agreement, to the purchaser under each Goods Sale Agreement, to the counterparty of each Wash-Out Agreement and to the issuer of each Letter of Credit and Letter of Indemnity in the form or substantially in the form set out in Schedule 1 or in such other form as the Bank may require and otherwise to perfect the security created or intended to be created by this Deed in accordance with the laws of any jurisdiction which the Bank considers relevant including without limitation: (i) the jurisdiction by the laws of which any Receivables are (whether by virtue of the terms of the document or instrument constituting or evidencing the same or otherwise) governed or construed, and (ii) the jurisdiction in which the obligor in respect of any Receivables is treated as being situated; and
- (b) promptly after the date of this Deed, cause this Deed to be registered, filed or recorded with the Companies House in the United Kingdom and/or with each other governmental registry, agency or department or court where, in the Bank's opinion, such registration, filing or recording is necessary or desirable for the protection of the Bank's interests in relation to the Security Interest created pursuant to this Deed,

and shall procure that the Bank receives whatever acknowledgements the Bank considers necessary to perfect the Security Interest created pursuant to this Deed.

6. Powers of the Bank

- 6.1** At any time after the Secured Amounts shall have become immediately due and payable under the provisions of the Financing Documents, the Bank shall immediately be entitled to exercise all or any of the statutory powers of a mortgagee in respect of the Charged Property in particular and without prejudice to the generality of the foregoing, the power of sale and the power of appointment of a receiver.
- 6.2** The provisions of Section 103 and Section 109 of the Act shall be so varied or extended by the provisions of this Deed and the power of sale and power of appointment of receiver conferred by the Act and the powers of the Bank in respect of the documents pledged to the Bank pursuant to this Deed shall be exercisable at any time after the Charged Property shall become immediately enforceable pursuant to Clause 6.1 above.

6.3 At any time after the Charged Property shall become enforceable, the Bank may, without notice to the Company or prior authorisation from any court, in its absolute discretion:

- (a) take possession and control of the Charged Property and any part thereof without being liable as mortgagee in possession;
- (b) from time to time at its discretion, be at liberty to give any notice which may be deemed necessary by the Bank to any person or persons owing moneys to the Company that all such moneys be paid to the Bank and the Company hereby irrevocably appoints the Bank to be its attorney to demand, sue for and recover and take all appropriate legal proceedings to recover such moneys and to give a good receipt for the same and to give such notices to the debtors of the Company and to take all necessary steps to complete the assignment of such moneys to the Bank;
- (c) sell, transfer or dispose of all the title to and interest in the Charged Property or any interest in the same at such price, in such manner and upon such terms and conditions (including type of consideration part thereof and manner of payment thereof) as the Bank may deem fit;
- (d) appoint a receiver of the Charged Property or any part thereof in accordance with Clause 7.1; and/or
- (e) exercise all or any of the powers, rights, remedies, authorities and discretions which are conferred upon it by this Deed (whether expressly or by reference) in relation to all or any part of the Charged Property;

and it is hereby further agreed that the powers conferred on the Bank by this Clause 6.3 shall be exercisable whether or not the Bank is in possession of the Charged Property, and whether or not a receiver for the income of the Charged Property has been appointed by it under its statutory power and is acting.

6.4 Any rights conferred by this Deed upon a Receiver may be exercised by the Bank at any time after the Charged Property shall become enforceable, whether or not the Bank shall have taken possession or appointed a Receiver of the Charged Property.

6.5 Any liability or power which may be exercised or any determination which may be made under this Deed by the Bank and the Receiver may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefor.

6.6 The powers which this Deed confers on the Bank and the Receiver are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the Bank or the Receiver thinks appropriate. Any failure to exercise or any delay in exercising any rights and powers by the Bank, any Receiver or any Delegate shall not preclude any other or further exercise of that or any other such right; and no act or conduct or negotiation on its part or on its behalf shall in any way preclude the Bank or the Receiver from exercising any such right or constitute a suspension or any variation of such right.

6.7 Section 93 of the Act shall not apply to this Deed and the Charged Property.

6.8 The Bank may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons or fluctuating body of persons all or any of the

powers, authorities and discretions which are for the time being exercisable by the Bank under this Deed in relation to the Charged Property and any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to such terms as the Bank may think fit and the Bank shall not be in any way liable or responsible to the Company for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate. Any third party referred to in this Clause 6.8 may enjoy the benefit or enforce the terms of this Clause 6.8 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

- 6.9** The Bank shall not be under any obligation or responsibility to any person to supervise the Delegate.
- 6.10** Where there is any ambiguity or conflict between the rights or powers conferred by law or contained in the Act or the Companies Act and those conferred by or pursuant to this Deed or where the powers or protections in this Deed or are more extensive or less *restrictive than those provided by the Act or the Companies Act*, the terms of this Deed shall prevail.
- 6.11** The Bank may, without prejudice to any other right, power or remedy of the Bank, at any time and from time to time, without further authority or notice to the Company, debit any account of the Company with the Bank with any of the Secured Amounts or any moneys due and payable to the Bank under this Deed.
- 6.12** If the Bank receives notice of any Security Interest or any other interest affecting the Charged Property;
- (a) the Bank may open a new account with the Company and, if it does not, it shall *nevertheless be deemed to have done so at the time it received such notice; and*
 - (b) all payments made by the Company to the Bank after the Bank receives such notice shall be credited or deemed to have been credited to the new account, and in no circumstances whatsoever shall operate to reduce the Secured Amounts as at the time the Bank received such notice.

7. Receiver

- 7.1** At any time after the Secured Amounts shall have become immediately due and payable under the provisions of the Financing Documents or if and when the power of sale shall become exercisable by the Bank, the Bank may by writing under hand or by deed appoint such person or persons (including an officer or officers of the Bank) as it thinks fit to be receiver or receivers of the Charged Property or any part thereof.
- 7.2** The Bank may by writing under hand or by deed remove the Receiver and appoint another in his place, and the Bank may also appoint another receiver if the Receiver resigns. If the Bank appoints more than one person as Receiver, the Bank may give those persons power to act either jointly or severally. Any Receiver referred to in this Clause 7.2 may enjoy the benefit or enforce the terms of this Clause 7.2 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 7.3** Any Receiver may be appointed as Receiver of all of the Charged Property or any part *thereof specified in the appointment. In the latter case, the rights conferred on a Receiver*

as set out in Clause 7.6 shall have effect as though every reference in Clause 7.6 to any Charged Property were a reference to the part of those assets so specified or any part of those assets. The exclusion of any part of the Charged Property from the appointment of the Receiver shall not preclude the Bank from subsequently extending his appointment (or that of the Receiver replacing him) to that part.

- 7.4** The Receiver shall, so far as the law permits, be the agent of the Company; and the Company shall be solely responsible for his acts and defaults and be liable on any contracts or engagements made or entered into by him; and in no circumstances whatsoever shall the Bank be in any way responsible for any of his misconduct, negligence or default.
- 7.5** The remuneration of the Receiver may be fixed by the Bank (without being limited to the maximum rate specified in Section 109(6) of the Act) and may be or include a commission calculated by reference to the gross amount of all moneys received or otherwise), but such remuneration shall be payable by the Company alone; and the amount of such remuneration may be debited by the Bank to any Bank Account of the Company, but shall, in any event, form part of the Secured Amounts and accordingly be secured on the Charged Property.
- 7.6** The Receiver shall have all the rights, powers, privileges and immunities conferred from time to time on receivers by law and in addition, shall also have the full power and the right, either in its own name or in the name of the Company or otherwise and in such manner and at the cost of the Company and upon such terms and conditions as that Receiver thinks fit, and either alone or jointly with any other person, at his absolute discretion do or omit to do anything which a Company could do or omit to do in relation to the Charged Property or any part thereof. In particular (but without limitation) any such Receiver may:
- (a) take possession of, get in and collect the Charged Property and to require payment to him or the Bank of any Receivables or any moneys standing to the credit of any Bank Account;
 - (b) carry on and manage the business of the Company insofar as it relates to the Charged Property and in particular but without limitation, to exercise any rights and perform all or any obligations of the Company in relation to the Charged Property;
 - (c) without restriction imposed by Section 103 of the Act or the need to observe any of the restrictions or other provisions of Section 93 or Section 103 of the Act, by public auction, private contract or otherwise, to sell, transfer, assign, hire out, lend, exchange, license or otherwise dispose of or in any way whatsoever deal with the Charged Property for such consideration (if any), including shares, debentures or any other securities whatsoever, and upon such terms as he may think fit;
 - (d) appoint and engage employees, managers, agents and advisers of the Company upon such terms as to remuneration and otherwise and for such periods as he may determine, and to dismiss them;

- (e) insure, repair, improve, replace, develop or exploit the Charged Property in any manner;
- (f) for such consideration and on such terms as he may think fit, to purchase outright or acquire by leasing, hiring, licensing or otherwise, any land, buildings, plant, equipment, vehicles or materials or any other property, assets or rights of any description which he considers necessary or desirable for the improvement or realisation or for the benefit of the Charged Property;
- (g) in connection with the exercise, or the proposed exercise, of any of his powers or in order to obtain payment of his remuneration (whether or not it is already due) to borrow or raise money from any person, including the Bank, without security or on the security of the Charged Property and generally in such manner and on such terms as he may think fit;
- (h) 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 Company or relating to the Charged Property;
- (i) bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Property or any business of the Company;
- (j) sell, assign, exchange, transfer or otherwise dispose of or realise all or any of the Charged Property and/or any of the liabilities of the Company to any other company or body corporate, whether or not formed or acquired for the purpose;
- (k) store, transport and/or warehouse the Goods and for such purposes, to make arrangements and enter into contracts directly with sellers, shippers, carriers and warehouse keepers and for the account of the Company, to pay all freight, warehousing, dock and other fees, charges and expenses relating thereto;
- (l) generally to carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatsoever, whether similar or not to any of the foregoing, in relation to the Charged Property which he may consider expedient as effectually as if he were solely and absolutely entitled to the Charged Property;
- (m) in connection with the exercise of any of his powers, to execute or do, or cause or authorise to be executed or done, on behalf of or in the name of the Company or otherwise, as he may think fit, all documents, acts or things which he may consider appropriate;
- (n) enter into bonds, covenants, guarantees, indemnities and other commitments and to make all payments needed to effect, maintain or satisfy them;
- (o) redeem any Security Interest over the Charged Property and to settle the accounts of any person with an interest in the Charged Property; and

- (p) exercise all powers set out in the Companies Act as now in force (whether or not in force at the date of exercise) and any powers added thereto, after the date of this Deed.

7.7 The Receiver shall in the exercise of the Receiver's powers, authorities and discretions conform to the discretions and directions from time to time given or made by the Bank. Any Receiver referred to in this Clause 7.7 may enjoy the benefit or enforce the terms of this Clause 7.7 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

7.8 All moneys arising from the exercise of the powers of the Receiver or the Bank and all *other moneys received by the Receiver or the Bank after the service of a demand for the payment or discharge of the Secured Amounts* shall be applied, subject to any claims ranking in priority to the rights of the Bank hereunder, in or towards discharging, in the following order or priority:

- (a) the amount of all costs, charges, expenses and liabilities paid, incurred, or charged by the Bank or the Receiver in connection with or as a result of the exercise of their respective powers, including the remuneration of the Receiver, or otherwise in relation to this Deed or any other document entered into between the Company and the Bank in such order as the Receiver or the Bank may from time to time determine;
- (b) all other Secured Amounts in such order as the Bank may from time to time determine; and
- (c) the claims of those entitled to any surplus;

but so that if and for so long as the Company has any further or contingent liability to the Bank, the Bank may place and keep any such moneys to the credit of such account or accounts, in such name or names, as the Bank may deem fit, without obligation to apply the same as mentioned above until all such liability is ascertained and due, and the same shall form part of the Charged Property.

7.9 Sections 109(6) and 109(7) of the Act shall not apply in relation to a Receiver appointed under Clause 7.1.

8. Protection of Third Parties

8.1 No purchaser from, or other person dealing with, the Bank and/or the Receiver shall be concerned to enquire:

- (a) whether any of the powers which they have exercised or purported to exercise has arisen or become exercisable;
- (b) whether the Secured Amounts remain outstanding;
- (c) whether any case has happened to authorise the Receiver to act or as to the propriety or validity of the exercise or purported exercise of any such power;
- (d) whether any consents, restrictions or directions relating to such rights have been obtained or complied with; or

(e) as to the application of any money borrowed or raised,

and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters.

8.2 The receipt of the Bank or the Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any moneys paid to or by the direction of the Bank or the Receiver.

8.3 In Clauses 8.1 and 8.2, "purchaser" includes any person acquiring, for money or money's worth, any Security Interest over, or any other interest or right whatsoever in relation to, the Charged Property.

9. Protection of Bank, Receiver and Delegate

9.1 In the event of any circumstances whereby further performance of any Relevant Document becomes impossible or unlawful or is otherwise frustrated moneys paid to the Bank shall not be recoverable from it.

9.2 None of the Bank, any Receiver or Delegate shall be liable in respect of any costs, expenses, loss or damage which arises out of the exercise, or the attempted or purported exercise of, or the failure to exercise any of their respective powers, unless such loss or damage is caused by its or his gross negligence or willful default. Any third party referred to in this Clause 9.2 may enjoy the benefit or enforce the terms of this Clause 9.2 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

9.3 Without prejudice to the generality of Clause 9.2, entry into possession of the Charged Property shall not render the Bank, any Receiver or any Delegate liable to account as mortgagee in possession; and if and whenever the Bank or the Receiver enters into possession of the Charged Property, it shall be entitled at any time at its pleasure to go out of such possession.

9.4 Upon any sale or disposal of the Charged Property or any part thereof which the Bank, any Receiver or any Delegate shall make or purport to make under the provisions of this Deed, a statement in writing from the Bank, any Receiver or any Delegate that the Security Interest created by this Deed has become enforceable and that the power of sale has become exercisable shall be conclusive evidence of the fact in favour of any purchaser or other person to whom any of the Charged Property may be transferred and such purchaser or other person will take the same free of any rights of the Company. The Company undertakes to indemnify the Bank, any Receiver or any Delegate against any claim which may be made against the Bank, any Receiver or any Delegate by such purchaser or any other person by reason of any defect in its title to the Charged Property. Any third party referred to in this Clause 9.4 may enjoy the benefit or enforce the terms of this Clause 9.4 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

9.5 The powers of the Bank and the Receiver under this Deed shall be construed in the widest possible sense and all parties to this Deed intend that the Bank and the Receiver shall have as wide and flexible a range of powers as may be conferred (or, if not expressly conferred, as is not restricted) by any applicable law.

10. Continuing Obligations

10.1 Notwithstanding anything contained in this Deed or implied to the contrary, the Company shall remain liable to observe and perform all the obligations assumed by it in relation to the Charged Property and/or any Relevant Document and the Bank shall not have any obligation or liability thereunder. The Bank shall not be obliged to make any enquiry as to the nature of sufficiency of any payment received by it or to make any claim or take any other action to collect the contract proceeds or any other moneys or to enforce any rights and benefits thereby charged or pledged.

11. Indemnity

11.1 The Company further covenants with the Bank to fully indemnify the Bank and the Receiver against all actions, losses, demands, claims, proceedings, liabilities, costs, charges and expenses which the Bank or the Receiver may incur or suffer:

- (a) in consequence of anything done or purported to be done by the Bank or the Receiver under this Deed or any other document relating thereto or of any failure by the Company to comply with its obligations to the Bank thereunder or otherwise in connection therewith; or
- (b) in consequence of any payment in respect of the Secured Amounts (whether made by the Company or a third person) being impeached or declared void for any reason whatsoever.

11.2 The obligation of the Company shall be to pay the Secured Amounts in the same currency in which the Secured Amounts are incurred or due (the "**Contractual Currency**") to the Bank under the Financing Documents. Any amount received or recovered by the Bank in a currency (the "**Relevant Currency**") other than the Contractual Currency, whether as a result of, or of the enforcement of, a judgement or order of court or tribunal of any jurisdiction, in the bankruptcy, dissolution or winding-up (as the case may be) of the Company or otherwise, in respect of any sum due to the Bank from the Company under the Financing Documents shall only constitute a discharge to the Company to the extent of the amount in the Contractual Currency which the Bank is able, in accordance with its usual banking procedure and practice, to purchase with the amount of the Relevant Currency so received or recovered on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so) after deducting any costs of exchange and any other related costs. If that amount in the Contractual Currency purchased is less than the amount of the Contractual Currency due to the Bank under the Financing Documents, the Company shall indemnify the Bank against the shortfall. This indemnity shall be an obligation of the Company independent of and in addition to its other obligations under this Deed.

11.3 The amounts payable under this Clause 11 shall carry interest as well after as before judgment in accordance with the Bank's usual practice for the time being from the date on which they were paid or incurred by the Bank or the Receiver (as the case may require) and such amounts and interest shall be immediately payable by the Company on demand by the Bank and may be debited by the Bank to any Bank Account, and shall form part of the Secured Amounts and accordingly be secured on the Charged Property under this Deed.

11.4 Each of the above indemnities constitutes a separate and independent obligation from the

other obligations in this Deed, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Bank and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Financing Documents or any judgment or other order and shall survive the termination of this Deed.

12. Fixed Security

- 12.1** The Company further covenants with the Bank, from time to time, upon demand to execute, at the Company's own cost, as a continuing security for the payment or discharge of the Secured Amounts, a first fixed mortgage or charge in terms specified by the Bank of all or any part of the Charged Property which is for the time being subject to the floating charge contained in this Deed.
- 12.2** The Bank may, at any time, by notice in writing served on the Company, convert the floating Charge contained in this Deed into a first fixed Charge over all the property, assets and rights for the time being subject to the said floating Charge or over so much of the same as is specified in the notice.

13. Further Assurances

- 13.1** The Company further covenants with the Bank from time to time upon demand by the Bank, to execute, at the Company's own cost, any document or do any act or thing:
- (a) which the Bank or the Receiver may specify with a view to facilitating the exercise, or the proposed exercise, of any of their powers;
 - (b) which the Bank may specify for the purpose of perfecting any charge or security created or intended to be created by this Deed;
 - (c) to confer on the Bank over any property and assets of the Company located in any jurisdiction outside the United Kingdom equivalent or similar to the Security Interest intended to be conferred by or pursuant to this Deed; or
 - (d) to, at any time after the Company fails to pay and discharge any of the Secured Amounts when due, vest in the Bank title or perfect the Bank's title, to any of the documents pledged to the Bank pursuant to this Deed so as to facilitate the exercise by the Bank of its power to sell and dispose of such documents,

including depositing, with the Bank, all title deeds, agreements, leases and documents relating to any of the Charged Property, executing any transfer, conveyance, charge, mortgage, assignment or assurance of the Charged Property (whether to the Bank or its nominees or otherwise), making any registration and giving any notice, order or direction.

14. Power of Attorney

- 14.1** For the purpose of securing the interest of the Bank in the Charged Property and the performance of its obligations to the Bank, whether under this Deed or otherwise, the Company irrevocably and by way of security appoints the Bank to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of

the Charged Property) on behalf of the Company and in its name or otherwise, to:

- (a) sign, seal, execute and deliver or date any document, including any notice or registration required pursuant to Clause 5.2 of this Deed;
- (b) do any act or thing which the Bank (or such substitute or delegate) may, in its or his absolute discretion, consider appropriate, either in connection with the exercise of any of the powers of the Bank or the Receiver, or with a view to remedying or mitigating the consequences of any failure of the Company to perform its obligations under this Deed or a Relevant Document, or to facilitate the realisation of the Charged Property;
- (c) carry out the Company's obligations under the Relevant Documents; or
- (d) receive all book or other debts or moneys for the time being due, owing or payable to the Company pursuant to or in connection with any Relevant Document and on payment to give an effectual discharge therefor and on non-payment to take (if the Bank in its sole discretion so decides) all steps and proceedings either in the name of the Company or in the name of the Bank for the recovery thereof and also to agree accounts and to make allowances and to give time to any surety,

and without prejudice to the generality of its power to appoint substitutes and to sub-delegate, the Bank may appoint the Receiver as its substitute or delegate, and any person appointed the substitute of the Bank shall, in connection with the exercise of the said power of attorney, be the agent of the Company.

14.2 The Company hereby ratifies and confirms and agrees to ratify and confirm any document, act or thing which any attorney appointed under this Clause 14 may execute or do. Any third party referred to in Clause 14.1 may enjoy the benefit of or enforce the terms of this Clause 14.2 in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999.

14.3 The Company hereby further declares that the powers and authority hereby conferred are given for valuable consideration and shall be and remain irrevocable until the discharge of all Security Interest created by this Deed.

15. Nature of Security

15.1 This Deed and the Security Interest created pursuant to this Deed shall:

- (a) secure the ultimate balance from time to time owing to the Bank by the Company and shall be a continuing security notwithstanding any intermediate settlement of account or any other act, event or matter whatsoever until the Secured Amounts have been paid in full and the Bank does not have any further commitment, obligation or liability (whether actual or contingent) to provide any loan, credit or other accommodation to the Company under the Financing Documents;
- (b) be in addition to, and not prejudice or affect, any present or future Collateral Instrument, right or remedy held by or available to the Bank; and
- (c) not merge with or be in any way prejudiced or affected by the existence of any such Collateral Instruments, rights or remedies or by the same being or becoming

wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Bank dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable. In particular but without limitation, nothing in this Deed shall prejudice or detract from any pledge or other Security Interest which the Bank may from time to time have or hold in relation to any of the documents pledged or the Goods, whether arising by delivery or possession of bill of lading or otherwise howsoever.

- 15.2** The Bank shall not be obliged to resort to any Collateral Instrument or other means of payment now or hereafter held by or available to it before enforcing this Deed and the Company waives any right it may have of first requiring the Bank (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Company under this Deed. No action taken or omitted by the Bank in connection with any such Collateral Instrument or other means of payment shall discharge, reduce, prejudice or affect the liability of the Company nor shall the Bank be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such Collateral Instrument or other means of payment and this waiver by the Company applies irrespective of any law or any provision of this Deed to the contrary.
- 15.3** Any release, discharge or settlement between the Company and the Bank and any payment by the Company shall be conditional upon no security, disposition or payment to the Bank by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled, (a) the liability of the Company and the Security Interest created pursuant to this Deed shall continue as if such payment, release, discharge or settlement had not occurred and (b) the Bank shall be entitled to recover the value or amount of that Security Interest or payment from the Bank and to enforce this Deed subsequently as if such payment, release, discharge or settlement had not occurred and any such payment had not been made.
- 15.4** If the Bank considers that any amount paid or credited to the Bank under this Deed is capable of being avoided or otherwise set aside on the winding-up of the Company or any other person, or otherwise, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Amounts have been irrevocably paid.
- 15.5** The Security Interest created pursuant to this Deed are in addition to and are not in any way prejudiced by any other guarantees or security now or subsequently held by the Bank.
- 16. Benefit of Agreement**
- 16.1** This Deed shall benefit and be binding on the parties, their respective successors and any permitted assignee or transferee of some or all of a party's rights and obligations under this Deed. Any reference in this Deed to any party shall be construed accordingly.
- 16.2** The Bank may assign its rights under this Deed or any part thereof and/or transfer its obligations hereunder or any part thereof to any party and for this purpose may disclose to a potential assignee or transferee such information about the Company as shall have been

made available to the Bank. Any such assignee or transferee shall be and be treated as a party for all purposes of this Deed and shall be entitled to the full benefit of this Deed to the same extent as if it were an original party in respect of the rights or obligations assigned or transferred to it.

16.3 Where the Bank transfers its obligations or any part thereof, the Company shall execute such documents as are reasonably necessary to release the Bank to the extent of the transfer and join the transferee as a party hereto. Any cost incurred by the Bank or such assignee or transferee in connection with such assignment or transfer shall be borne by the Company.

16.4 The Company shall not assign its rights or transfer its obligations and benefits under this Deed or any part thereof.

17. Notice and Communications

17.1 Any notice or communication under or in connection with this Deed shall be in writing and shall be delivered personally, or by post or facsimile to the addresses given in this Deed identified with its name below or at such other address as the recipient may have notified to the other party in writing. Proof of posting or despatch of any notice or communication to the Company shall be deemed to be proof of receipt:

- (a) in the case of a letter, twenty-four (24) hours after posting; and
- (b) in the case of any notice or communication made by facsimile, when confirmed by an activity report indicating that the correct number of pages was sent to the correct facsimile number and that such facsimile message was well-received.

17.2 Except as specified in Clause 17.1 herein, no communication from the Company to the Bank may be effected by electronic mail or any other electronic media without the agreement of the Bank and shall not be deemed received by the Bank until such electronic message has actually been received by the Bank in a format readily decipherable by the Bank's messaging system.

17.3 All notices or communications under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

17.4 Any communication or document to be made or delivered to the Bank will be effective only *when actually received by the Bank and then only if it is expressly marked for the attention of the department or officer identified with the Bank's signature below (or any substitute department or officer as the Bank shall specify for this purpose).*

18. Governing Law and Jurisdiction

18.1 This Deed is governed by and shall be construed in accordance with English law. The Company hereby irrevocably submits to the exclusive jurisdiction of the courts of England and/or of any other court as the Bank may elect, waives any objections on the ground of venue or forum non-convenience or any similar grounds and consents to service of process by mail or in any other manner permitted by the relevant law.

- 18.2** This Clause 18 is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a dispute arising out of or in connection with this Deed in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

19. Service of Process

- 19.1** Service of any writ of summons or other legal process ("service of process") may be effected on the Company by sending it by hand or by registered post to the Company's last known address, registered office, place of business or such other address in the United Kingdom notified to the Bank by the Company, and such service of process shall be deemed to be good and effectual service on the Company notwithstanding that it may be returned by the post office undelivered. Nothing shall affect the Bank's rights to serve process in any other manner permitted under any applicable law.

- 19.2** In the event that the Company is not incorporated in United Kingdom and does not have an address in United Kingdom for service of process, the Company shall appoint a person or entity in United Kingdom to be its agent for service of process and advise the Bank in writing. Any writ, judgment or other notice of legal process shall be sufficiently served if delivered to such agent at its address for the time being. The Company undertakes not to revoke the authority of such agent and if, for any reason, such agent no longer serves as the Company's agent to receive service of process, the Company shall promptly appoint another agent and advise the Bank thereof in writing.

20. Miscellaneous

- 20.1** If any of the provisions of this Deed becomes invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 20.2** A certificate by the Bank as to any sum payable by the Company under this Deed shall be conclusive and binding on the Company in the absence of manifest error.
- 20.3** The Company shall pay or reimburse the Bank from time to time forthwith on demand and on a full indemnity basis all costs, expenses and charges (including stamp duty, legal and other fees and all other out-of-pocket expenses and all applicable goods and services tax or similar duties or tax) reasonably incurred by the Bank in connection with the preparation, execution and registration of this Deed.
- 20.4** 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.
- 20.5** Unless expressly provided otherwise in this Deed, a person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any provision of this Deed, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Deed.
- 20.6** In the event of a conflict or inconsistency between the provisions of this Deed and the provisions of the Financing Documents, the provisions of the Financing Documents shall prevail to the extent of such conflict or inconsistency.

SCHEDULE 1

Form of Notice of Charge and Assignment (Clause 5.2(a))

To: [Seller]/[Purchaser]/[L/C or Letter of Indemnity issuer]/[counterparty to Wash-Out Agreement] [Insurer]

cc: [The Bank]
[Address]

[Date]

Notice of Charge and Assignment

We refer to [the contract (the "**Contract**") dated • 20• made between • (the "**Company**") and yourselves] [the Letter of Indemnity ("**Letter of Indemnity**") dated • 20• issued by you to • (the "**Company**") [the Letter of Credit ("**L/C**") dated • 20• number • opened/confirmed by you in favour of • (the "**Company**") [the Wash-out Agreement (the "**Wash-Out Agreement**") dated • 20• made between • (the "**Company**") and yourselves] [the Insurance Policy ("**Insurance Policy**") dated • 20• number • taken up out by • (the "**Company**") with you] relating to •

We hereby give you notice that by a charge and assignment contained in a Deed of Charge And Assignment dated [•] entered into between the Company and DBS Bank Ltd. (the "**Bank**"), the Company has charged and/or assigned to the Bank all its present and future right, title, benefits and interest [under the Contract] [in and to all moneys payable by you to the Company under [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] and any claims, awards and judgments receivable or received by or in favour of the Company, pursuant to and under or in connection with the [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy]. Notwithstanding such charge and assignment, the Company remains liable to perform all its obligations under [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] and the Bank shall have no liability whatsoever in respect thereof.

[We hereby irrevocably instruct you to pay all moneys payable by you to the Company under [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] to account no. • with •. These instructions may not be revoked or varied without the Bank's prior written consent.]

You shall not be entitled to set-off any moneys whatsoever payable to the Company's account against all and any claims whatsoever which you may have from time to time against the Company.

This authority and instruction is irrevocable without the prior written consent of the Bank. Despite the charge and assignment referred to above or the making of any payment by you to the Bank pursuant to it, the Company shall remain liable to perform all its obligations under [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] and neither the Bank nor any receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy].

The Company shall not and you agree that the Company shall not amend, vary, waive (or agree to amend, vary or waive) any provision of [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] or exercise any right to rescind, cancel or terminate [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] without the prior written consent of the Bank. You should continue to give notices under [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] to the Company, in each case unless you receive written notice from the Bank to the contrary, in which event all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Bank or as it directs.

Please acknowledge receipt of this Notice of Charge and Assignment and confirm that:

1. you will pay all sums due under [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] as directed by or pursuant to this Notice of Charge and Assignment;
2. you will not claim or exercise any set-off or counterclaim in respect of [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy];
3. you have not received any other notice of any assignment or charge of [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy] or of any other interest of any third party in [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement] [the Insurance Policy]; and
4. you will comply with the other provisions of this Notice of Charge and Assignment,

by signing the acknowledgement on the attached copy of this Notice of Charge and Assignment and returning that copy to the Bank at [•], marked for the attention of [•].

.....

for and on behalf of

[•]

as Company

[On duplicate]

We acknowledge receipt of the Notice of Charge and Assignment of which this is a copy and confirm each of the matters referred to in paragraphs 1 to 4 (inclusive) of the Notice of Charge and Assignment.

For and on behalf of

[Party to [the Contract] [the Letter of Indemnity] [the L/C] [the Wash-Out Agreement]]

Date:

SCHEDULE 2

Fundamental Requirements of Letters of Indemnity

1. Particulars of cargo and vessel.
2. Date of bill[s] of lading.
3. Warranty as to title of seller free from liens and encumbrances and entitlement of seller to transfer title to the Company.
4. Undertaking to deliver to the Company original bill[s] of lading as soon as possible and, in any event, not later than one year of date of bill[s] of lading.
5. Indemnity for losses flowing from inability to transfer bill[s] of lading to the Company.
6. Letter of Indemnity to be addressed to the Company and the Bank or to be addressed to the Company with provision entitling the Company to assign the benefit to the Bank.

EXECUTED as a DEED and DELIVERED)

for and on behalf of **Stemcor London Trading Limited**)

a company incorporated in)

by **Andrew Checketts**)

being a person who, in accordance with the)

laws of that territory, is acting under the)

authority of the company in the presence of:)



Witness:

Signature 

Name Anna Kashy

Address 47 King Rd, London SW14 8PF

Occupation Lawyer