



Registration of a Charge

Company Name: **FERGUSON & MENZIES LIMITED**

Company Number: **SC034282**



XC9SVNEY

Received for filing in Electronic Format on the: **13/08/2023**

Details of Charge

Date of creation: **10/08/2023**

Charge code: **SC03 4282 0005**

Persons entitled: **ELAINE PROUD**

Brief description:

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: **STEWART WHYTE, SOLICITOR**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 34282

Charge code: SC03 4282 0005

The Registrar of Companies for Scotland hereby certifies that a charge dated 10th August 2023 and created by FERGUSON & MENZIES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th August 2023 .

Given at Companies House, Edinburgh on 14th August 2023

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

FLOATING CHARGE

by

FERGUSON & MENZIES LIMITED

in favour of

ELAINE PROUD



For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Agreement is delivered on 10 August 2023

FLOATING CHARGE

by

FERGUSON & MENZIES LIMITED incorporated and registered in Scotland with company number SC034282 whose registered office is at 312 Broomloan Road, Glasgow, Scotland, G51 2JW ("the Company").

in favour of

ELAINE PROUD residing at 109 Elder Street, Glasgow, G51 3NJ (**Creditor**).

WHEREAS

- (A) The Company's holding company, Ferguson & Menzies Topco Ltd ("**Topco**"), has issued the Loan Notes (as defined below) to the Creditor and the Company has agreed to guarantee the payment obligations of Topco to the Creditor .
- (B) The Company has agreed to grant a floating charge (the "**Floating Charge**") to the Creditor on the terms set out in this document as security, inter alia, for the performance of the Company's payment obligations and other liabilities to the Creditor under and pursuant to the guarantee and indemnity contained in the Loan Note Instrument (as defined below) in respect of the Loan Notes.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1. Interpretation

1.1. In the interpretation of this Floating Charge, the following terms shall have the following meanings:

"Assets"	means the whole of the property (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of the Company.
"Business Day"	means a day (other than a Saturday or Sunday) when banks are open for business in Scotland.
"Default Rate"	means the rate of interest payable in accordance with the terms of the Loan Note Instrument in relation to any amount which is not paid on the due date therefor.
"Loan Note Instrument"	means the loan note instrument dated on or about the date of this floating charge pursuant to which Topco has created £1,619,047.60 guaranteed secured loan notes.
"Loan Notes"	means the £1,619,047.60 Loan Notes 2023 created by Topco pursuant to the Loan Note Instrument on or about the date of this Floating Charge.
"Receiver"	means a receiver or administrative receiver appointed under this Floating Charge in respect of the Company or over all or any of its Assets;
"Secured Liabilities"	means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Creditor by the Company, whether actually or

contingently, solely or jointly and whether as principal, guarantor, cautioner or surety, including the Company's payment obligations and other liabilities to the Creditor under the Loan Note Instrument in respect of the Loan Notes.

1.2. In this Floating Charge, references to:

- 1.2.1. the singular includes the plural and vice versa;
- 1.2.2. references to gender include references to both genders;
- 1.2.3. clause headings are for reference only and shall not affect the construction or interpretation of this Floating Charge;
- 1.2.4. statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation; and
- 1.2.5. any term or phrase defined in the Companies Act 1985 or the Companies Act 2006 (as amended or in force from time to time) shall bear the same meaning in this Floating Charge.

2. **Payment Obligation**

- 2.1. The Company shall on demand in writing made to it pay or discharge the Secured Liabilities upon the Secured Liabilities becoming due and payable.
- 2.2. If the Company shall fail to pay any amount due under this Floating Charge when it is due, then such amount will bear interest at the Default Rate (after as well as before decree and payable on demand) from the due date until such amount is paid in full to the Creditor.

3. **Charging Provision**

- 3.1. The Company grants a Floating Charge over the Assets to the Creditor as a continuing security for the payment or discharge of the Secured Liabilities.
- 3.2. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to this Floating Charge.

4. **Negative Pledge and Ranking of Floating Charge**

- 4.1. The Company agrees that it shall be prohibited from granting or creating subsequent to the date of this Floating Charge any fixed security or any other floating charge over the Assets or any part or parts of them, other than with the prior written consent of the Creditor.
- 4.2. Any fixed security granted by the Company in favour of the Creditor (whether before or after the date of this Charge) shall rank in priority to the floating charge created by this Floating Charge.
- 4.3. In the event that the Company grants or creates any fixed security or floating charge in breach of the prohibition in clause 4.1, this Floating Charge shall rank in priority to that fixed security or floating charge.

5. **Undertakings**

- 5.1. The Company shall not without the prior written consent of the Creditor:
 - 5.1.1. sell, transfer, assign, factor, lease, license or otherwise dispose of all or any of the Assets or its interest in them other than in the ordinary course of trading; or

- 5.1.2. grant any lease of, part with possession or share occupation of, the whole or any part of its Properties, or confer any licence, right or interest to occupy or grant any licence or permission to assign, sublet or part with possession of the same;
- 5.1.3. cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Assets.

5.2. The Company shall:

- 5.2.1. at all times comply with the terms of this Floating Charge:
- 5.2.2. if and when required by the Creditor, grant in her favour (or as the Creditor may direct) such fixed or specific security or charge or assignation over all or any of the Assets as the Creditors may require;
- 5.2.3. comply in all material respects with the terms of all applicable laws and regulations including (without limitation) all environmental laws, legislation relating to public health, town and country planning, control and handling of hazardous substances or waste, fire precautions and health and safety at work;
- 5.2.4. keep the Assets in good and substantial repair and in good working order and condition, ordinary wear and tear excepted;
- 5.2.5. ensure that all the Assets that are insurable are insured with a reputable insurer or underwriter to such extent and against such risks as is normal for prudent companies in businesses similar to those of the Company and pay all premiums and other money due and payable under all such insurances and provide premium receipts or any other evidence of payment upon request by the Creditor.
- 5.2.6. notify the Creditor immediately if any creditor executes diligence against the Company or any distress or execution is levied or enforced against the Company, or any type of third-party debt order or freezing order is made and served on the Company; and
- 5.2.7. notify the Creditor immediately if any steps (including, without limitation, the making of an application or the giving of any notice) are taken by any person (including, without limitation, the Company) in relation to the administration, receivership, winding-up or dissolution of the Company.

6. Protection of Security

- 6.1. The Company agrees that this Floating Charge is and shall be in addition and without prejudice to any other security or rights which the Creditor holds or may hold in respect of all or any of the Secured liabilities.
- 6.2. This Floating Charge will be a continuing security for the Secured Liabilities notwithstanding any intermediate payment or settlement of all or part of the Secured Liabilities.
- 6.3. The obligations of the Company under this Floating Charge will not be affected by any act or omission, circumstance, matter or thing which but for this provision might operate to release or otherwise exonerate it from any obligations hereunder in whole or in part, including (without limitation):
 - 6.3.1. any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Creditor may have now or in the future from or against the Company or any other person in respect of the Secured Liabilities;
 - 6.3.2. any act or omission of the Creditor or any other person in taking up, perfecting, or enforcing any security or guarantee from or against the Company or any other person or the invalidity of such security or guarantee;
 - 6.3.3. any amendment, variation, restatement of, or supplement to or novation, transfer or termination (in whole or in part) of any document relating to the Secured Liabilities or any exercise by the Creditor (in her absolute discretion) of her rights to refuse, grant, continue, vary, review, determine or increase any facilities to the Company or any other person;
 - 6.3.4. any grant of time or indulgence, waiver or concession to the Company or any other person;
 - 6.3.5. any arrangement or compromise entered into between the Creditors and the Company or any other person;
 - 6.3.6. the administration, bankruptcy, insolvency, liquidation, winding up, receivership, dissolution, incapacity, limitation, discharge by operation of law or change in the constitution of the Company or any other person;
 - 6.3.7. the invalidity, illegality, unenforceability, irregularity or frustration of the Secured Liabilities or any of the obligations of the Company or any other person;
 - 6.3.8. any postponement, discharge, reduction, non-provability, inability to claim, or similar circumstance affecting the obligation of any other person resulting from any administration, insolvency, liquidation, receivership or dissolution proceedings or from any law, regulation or order.
- 6.4. The Creditor shall not be obliged, before exercising any of its rights, powers or remedies conferred upon it by or pursuant to this Floating Charge or by law to:
 - 6.4.1. take any action or obtain judgement or decree in any court against the Company;
 - 6.4.2. make or file any claim to rank in a winding-up or a liquidation of, or other proceedings relating to the Company; or
 - 6.4.3. enforce or seek to enforce any other security taken, or exercise any right or pleas available to the Creditor, in respect of the Secured Liabilities.
- 6.5. Any settlement or discharge between the Company and the Creditor shall be conditional upon no security or payment granted or made to the Creditor by the Company or any other person being avoided or reduced by virtue of any provision or enactment relating to administration, bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without prejudice to any other rights of

the Creditor) the Creditor shall be entitled to recover from the Company the value or amount of such security or payment from the Company as is such settlement or discharge had not occurred.

7. Enforcement

7.1. This Floating Charge shall become enforceable upon and at any time after the occurrence of any of the following events:

- 7.1.1. if the Company has failed to pay all or any of the Secured Liabilities following a demand for payment from the Creditor;
- 7.1.2. any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Company or by any other person to appoint an administrator in respect of the Company;
- 7.1.3. any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Company or by any other person to wind up or dissolve the Company or to appoint a liquidator (whether provisional, interim or otherwise), trustee, receiver, administrative receiver or similar officer of the Company or any part of its undertaking or assets;
- 7.1.4. the making of a request by the Company for the appointment of a receiver or administrator; and
- 7.1.5. if the Company breaches any of the provisions of this Floating Charge.

8. Appointment of Receiver or Administrator

8.1. At any time after this Floating Charge has become enforceable the Creditor shall be and is entitled to appoint in writing any one or more persons as:

- 8.1.1. a Receiver of all or any of the Assets; and/or
- 8.1.2. an administrator of the Company,
- 8.1.3. in each case in accordance with and to the extent permitted by applicable laws.

8.2. Without prejudice to the foregoing provisions, if any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then the Creditor shall be entitled to appoint another person or persons as Receiver or Receivers in his place.

8.3. Where more than one Receiver is appointed they will have power to act separately (unless the appointment by the Creditor specifies to the contrary).

8.4. The Company shall be solely responsible for the acts and defaults of a Receiver appointed under this Charge and for his remuneration, costs, charges and expenses and the Creditor shall not have any liability or responsibility in respect of any act or default of such Receiver or of any such remuneration, costs, charges and expenses.

8.5. Subject to section 58 of the Insolvency Act 1986, the Creditor may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another person as Receiver in his place.

8.6. The Receiver will be the agent of the Company (which will be solely liable for his acts, defaults and remuneration) and will have and be entitled to exercise in relation to the Company all the powers set out in Schedule 2 to the Insolvency Act 1986 and, in addition to such powers, the Receiver will have power:

- 8.6.1. to promote the formation of a subsidiary or subsidiaries of the Company, including, without limitation, any such subsidiary formed for the purpose of purchasing, leasing, licensing or otherwise acquiring interest in all or any of the assets of the Company;
- 8.6.2. to make any arrangement or compromise which the Creditor or the Receiver may think fit;
- 8.6.3. to sever any fixtures (including trade and tenants' fixtures) from the property of which they form part;
- 8.6.4. to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Assets including, without limitation, all voting and other rights attaching to stocks, shares and other securities owned by the Company;
- 8.6.5. to convene an extraordinary general meeting of the Company;
- 8.6.6. to exercise all powers conferred by the Insolvency Act 1986 on receivers appointed in England and Wales in respect of any of the Assets located in England and Wales; and
- 8.6.7. to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise incidental or conducive to the preservation, improvement or realisation of the Assets.

9. Application of Security Proceeds

- 9.1. Any money received under the powers conferred by this Floating Charge will, subject to the payment or repayment of any prior claims, be paid or applied in payment or discharge of the Secured Liabilities (subject to the terms of section 60 of the Insolvency Act 1986 and other applicable laws) provided that the Receiver may retain any money in his hands for so long as he thinks fit and the Creditor may, without prejudice to any other rights the Creditor may have at any time and from time to time, place and keep for such time as the Creditor may think prudent any money received, recovered or realised under or by virtue of this Floating Charge to or at a separate or suspense account to the credit either of the Company or as the Creditor thinks fit without any immediate obligation on the part of the Creditor to apply such money or any part of such money in or towards the payment or discharge of the Secured Liabilities.
- 9.2. Subject to clause 9.2, any money received or realised by the Creditor from the Company or a Receiver under this Floating Charge or any administrator may be applied by the Creditor to any item of account or liability or transaction in such order or manner as the Creditor may determine

10. Notices

- 10.1. Any communication to be made under or in connection with this agreement shall be made in writing and, unless otherwise agreed between the parties, shall be by letter to the addresses shown under the parties' details given above.
- 10.2. Any letter delivered by one person to another under or in connection with this agreement will only be effective when it has been delivered to the relevant address or three Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address.

11. Miscellaneous

- 11.1. No failure or delay by the Creditor in exercising any right or remedy under this Floating Charge shall operate as a waiver, and no single or partial exercise shall prevent further exercise, of any right or remedy.
- 11.2. This Floating Charge may be executed in any number of counterparts and by each of the parties on separate counterparts. If executed in counterparts, this Floating Charge will not take effect until each of the counterparts has been delivered. Each counterpart will, when executed and delivered, constitute a duplicate original, and all of the counterparts shall together constitute the one agreement.

12. Consent to Registration

The Company consents to the registration of this Floating Charge for preservation and execution.

13. Governing Law

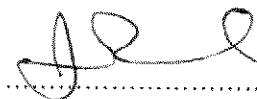
This Floating Charge shall be governed by and construed according to Scots law **IN WITNESS WHEREOF** these presents consisting of this and the preceding ~~five~~ ^{SIX} (6) pages are executed as follows:

Signed for and on behalf of **FERGUSON & MENZIES LIMITED**

by John Proud, a director

at GLASGOW

on 10/08/2023



Director

in the presence of:



..... Witness signature

FINLAY SWAN Witness full name

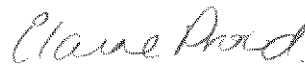
109 DOUGLAS STREET Witness address

GLASGOW G2 4HD

Signed by **ELAINE PROUD**

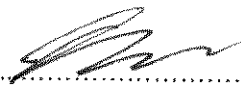
at GLASGOW

on 10/08/2023



Elaine Proud

in the presence of:



..... Witness signature

FINLAY SWAN Witness full name

109 DOUGLAS STREET Witness address

GLASGOW G2 4HD