



Registration of a Charge

Company name: **GRACO (SCOTLAND) LIMITED**

Company number: **SC164196**



X90I2BY1

Received for Electronic Filing: **10/03/2020**

Details of Charge

Date of creation: **27/02/2020**

Charge code: **SC16 4196 0003**

Persons entitled: **HUGH MULLANEY**

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

REBECCA SCOTT, SOLICITOR



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 164196

Charge code: SC16 4196 0003

The Registrar of Companies for Scotland hereby certifies that a charge dated 27th February 2020 and created by GRACO (SCOTLAND) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th March 2020 .

Given at Companies House, Edinburgh on 11th March 2020

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

Graco (Scotland) Limited

in favour of

Hugh Mullaney

HARPER MACLEOD LLP IS ONLY ADVISING MULMAC LIMITED AND NO OTHER PARTY IN RESPECT OF THIS DOCUMENT. EACH OTHER PARTY TO THIS DOCUMENT SHOULD TAKE ITS OWN INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS DOCUMENT AS THE EXECUTION OF THIS DOCUMENT WILL HAVE LEGAL EFFECT AND IMPLICATIONS.

HARPER MACLEOD LLP IS ONLY ADVISING MULMAC LIMITED AND NO OTHER PARTY IN RESPECT OF THIS DOCUMENT. EACH OTHER PARTY TO THIS DOCUMENT SHOULD TAKE ITS OWN INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS DOCUMENT AS THE EXECUTION OF THIS DOCUMENT WILL HAVE LEGAL EFFECT AND IMPLICATIONS.

Floating Charge by

Graco (Scotland) Limited, a company incorporated and registered in Scotland (Company Number SC164196) and having its registered office at 28 Field Road, Busby, Glasgow, G76 8SE (the "**Company**"),

in favour of

Hugh Mullaney of 53 Birchwood Drive, Paisley, PA2 9NF (the "**Lender**").

It is agreed as follows:-

1 Definitions and interpretation

1.1 In this Instrument, unless the context otherwise requires or permits, the following shall have the following meanings:

"**Act**" means the Companies Act 1985;

"**Administrator**" means any administrator appointed in respect of the Company (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise);

"**Business Day**" means a day other than a Saturday, Sunday or a day which is a bank holiday in any part of Glasgow;

"**Default Rate**" means in respect of any Secured Liability, the rate per annum which is 4% above the Royal Bank of Scotland PLC's base rate as the same fluctuates from time to time;

"**Enforcement Event**" means any of the following events:

- (a) the Company has failed to pay all or any of the Secured Liabilities in accordance with clause 2.1;
- (b) any breach of the terms of this Instrument by the Company;
- (c) the occurrence of any event, howsoever described, which entitles the Lender to accelerate, or demand repayment of, the Secured Liabilities (or any part thereof) and/or declare any Security granted in respect of any of the Secured Liabilities (or any part thereof) enforceable; and/or
- (d) the occurrence of an Insolvency Event;

"**Financial Collateral**" shall have the meaning given to that expression in the Financial Collateral Regulations;

"**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003 No. 3226);

"**Insolvency Act**" means the Insolvency Act 1986;

"**Insolvency Event**" means:

- (a) any application, notice, resolution or order being made, passed or given for or in connection with the winding-up, liquidation, dissolution, administration or reorganisation of the Company;

- (b) the Company becoming subject to any insolvency, winding-up reorganisation, receivership (whether relating to all or only some of its assets), administration, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency;
- (c) the appointment of an Insolvency Representative in respect of the Company and/or any of its assets;
- (d) the Company assigning all or any of its assets for the benefit of its creditors generally (or any class thereof) or entering into any composition or arrangement with its creditors generally or any arrangement being ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;
- (e) the Company becoming subject to any distribution of its assets in consequence of insolvency, reorganisation, winding-up, liquidation, dissolution or administration; or
- (f) any event analogous to any of the foregoing occurring in relation to the Company or any of its assets in any jurisdiction;

"Insolvency Representative" means any liquidator, administrator, receiver and manager, administrative receiver, custodian, trustee or any similar officer in any jurisdiction;

"Instrument" means this floating charge;

"Insurances" means the Company's interest in all contracts and policies of insurance which are from time to time taken out or effected by or on behalf of the Company in connection with the Secured Assets;

"Receiver" means any receiver or administrative receiver appointed in respect of all or any of the Secured Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes (without limitation) joint receivers and joint administrative receivers;

"Secured Assets" means the whole of the property and assets (including without limitation, uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Company;

"Secured Liabilities" means all present and future obligations and liabilities whatsoever (whether actual or contingent, whether owed jointly or severally and whether owed as principal or surety or in any other capacity whatsoever) of the Company to the Lender (and whether originally owing to the Lender or purchased or acquired by the Lender) together with any of the following matters relating to or arising in respect of, those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for damages or restitution; and
- (c) any claim as a result of any recovery by the Company of a payment or discharge on the grounds of preference,

and any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of those amounts in any insolvency or other proceedings;

"Secured Liabilities Discharge Date" means the date on which the Secured Liabilities have been unconditionally and irrevocably and fully and completely paid and/or discharged to the satisfaction of the Lender and the Lender is satisfied no further Secured Liabilities are capable of becoming outstanding;

"Security" means a mortgage, charge (fixed or floating), standard security, assignment in security, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and

"Security Financial Collateral Arrangements" shall have the meaning given to that expression in the Financial Collateral Regulations.

- 1.2 References in this Instrument to a "fixed security" shall be construed as a reference to a fixed security as defined by Section 486 of the Act as in force at the date of this Instrument.
- 1.3 Reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.4 References to **"including"** shall not be construed as limiting the generality of the words preceding it.
- 1.5 Any reference in this Instrument to a document of any kind whatsoever (including, without limitation, this Instrument) is to that document as amended, varied, supplemented, novated or substituted from time to time.
- 1.6 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity.
- 1.7 The singular includes the plural and vice versa and any gender includes all genders.
- 1.8 The clause headings are inserted for convenience and shall not affect the construction of this Instrument.
- 1.9 References to Clauses are references to the relevant clauses in this Instrument.
- 1.10 References to persons shall include their respective successors and permitted assignees and permitted transferees.
- 1.11 Reference to the **"winding-up"** of a person also includes the amalgamation, reconstruction, reorganisation, insolvency, bankruptcy, sequestration, administration, dissolution, provisional liquidation, liquidation, receivership, merger or consolidation of that person, the entering into of a scheme of arrangement of affairs, voluntary arrangement or trust deed for creditors (or other composition in satisfaction of debts) in respect of that person, the appointment of an administrator, receiver, trustee in sequestration, judicial factor or any other equivalent officer in any jurisdiction in respect of that person, and any other analogous procedure under the law of any jurisdiction which has a similar effect to the foregoing.
- 1.12 Unless the context otherwise requires, a reference to the Secured Assets includes:
 - 1.12.1 any part of the Secured Assets; and
 - 1.12.2 the proceeds of that Secured Asset.

2 Bond

- 2.1 The Company undertakes to the Lender that it will pay and discharge to the Lender (or to such other person as the Lender may direct) all of the Secured Liabilities on demand in writing when the same are due.

2.2 The Company agrees that if it shall fail to pay and discharge any part of the Secured Liabilities when due then such amount shall bear interest (after as well as before decree and payable on demand) on a daily basis based on a year of 365 days at the Default Rate from the due date thereof until paid in full.

2.3 A certificate signed by or on behalf of the Lender as to the amount, calculation or nature of the Secured Liabilities or any part of it will, in the absence of manifest error, be conclusive and binding on the Company.

3 Floating Charge

3.1 The Company, as security for the payment and discharge of all the Secured Liabilities, hereby grants in favour of the Lender a floating charge over the Secured Assets.

3.2 Paragraph 14(2)(a) of Schedule B1 to the Insolvency Act shall apply to the floating charge created by this Instrument which is a "qualifying floating charge" for the purpose of paragraph 14(1) of Schedule B1 of the Insolvency Act.

4 Ranking

4.1 The Company agrees that, except with the prior written consent of the Lender, it shall be prohibited from granting or creating subsequent to the date of this Instrument, any fixed security or any other floating charge having priority over or ranking pari passu with the floating charge created by this Instrument, otherwise than in favour of the Lender.

4.2 The floating charge created by this Instrument shall, if the Company grants another charge in breach of Clause 4.1, subject to section 464(2) of the Act, rank in priority to any other fixed security which shall be created by the Company after its execution of this Instrument (other than a fixed security in favour of the Lender) and to any other floating charge which shall be created by the Company after its execution of this Instrument and (subject as aforesaid) no such fixed security or other floating charge shall rank in priority to or equally with the floating charge hereby created by it.

5 Undertakings

5.1 The Company hereby represents and warrants to the Lender as follows:-

5.1.1 the documents which contain or establish the Company's constitution include provisions which give power, and all necessary corporate authority has been obtained and action taken, for the Company to grant the floating charge hereby created and to execute, deliver and perform the undertakings and obligations contained in this Instrument;

5.1.2 this Instrument constitutes legal, valid and binding obligations of the Company enforceable in accordance with their terms; and

5.1.3 the Company's execution and delivery of this Instrument and the Company's performance of any of the undertakings or obligations contained in this Instrument does not, and will not, conflict with:

5.1.3.1 any law or regulation applicable to it;

5.1.3.2 its constitutional documents; and/or

5.1.3.3 any agreement, deed, certificate, instrument or other document whatsoever binding upon it or any of its assets or constitute a default or termination event (howsoever described) thereunder.

5.2 Except as the Lender may otherwise agree in writing, the Company hereby undertakes that it shall:-

- 5.2.1 carry on and conduct its business and affairs in a proper and efficient manner;
- 5.2.2 not make any substantial alteration in the nature of, or mode of conduct of, its business;
- 5.2.3 not purchase, licence or otherwise acquire any assets outwith the ordinary course of business or not on an arm's length basis;
- 5.2.4 not sell, transfer, assign, lease, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Secured Assets, save for in the ordinary course of business;
- 5.2.5 keep, or cause to be kept, proper books of account relating to its business;
- 5.2.6 permit the Lender or any person authorised by the Lender to have access to, and inspect free of charge, its company books;
- 5.2.7 not pull down or remove the whole or any part of any buildings forming part of the Secured Assets or sever or unfix or remove any of the fixtures attaching to them nor (except for the purposes of effecting necessary repairs or of replacing any of them with new or improved models or substitutes) remove any of the plant and machinery belonging to or used by the Company;
- 5.2.8 keep all of the Secured Assets in good and sufficient repair and all plant and machinery and other moveable property in good working order and condition and, as and when requisite (whether by reason of an original or inherent defect, obsolescence, destruction or otherwise), rebuild, renew and replace the same;
- 5.2.9 not grant or agree to grant any tenancy or licence affecting all or any of the Secured Assets or grant or agree to grant a lease of, or accept a surrender of a lease or tenancy of, all or any part of them;
- 5.2.10 not become cautioner, guarantor or surety for any person, firm or company;
- 5.2.11 not undertake any obligation to any third party whereby its rights to recover or take payment of any monies due or which may become due to it from any debtor of it are postponed or subordinated to the claims of such third party;
- 5.2.12 pay (and indemnify the Lender, any Receiver and any Administrator against) all rents, rates, taxes, levies, assessments, impositions and outgoings whatsoever (whether imposed by agreement, statute or otherwise, whether in the nature of capital or revenue and even if wholly novel and whether governmental, municipal or otherwise) which may be imposed upon or payable in respect of the Secured Assets as and when the same shall become payable, taking into account agreed periods of grace (if any), and also punctually pay and discharge all debts and obligations which by law may have priority over the floating charge created by this Instrument;
- 5.2.13 maintain its centre of main interests (COMI) for the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) in the United Kingdom;
- 5.2.14 not transfer, factor, discount, sell, assign, release, compound, subordinate, defer or vary the terms of any book or other debts or moneys for the time being due, owing or payable to the Company or otherwise deal with the same, except in the usual course of business;
- 5.2.15 subject always to Clause 5.2.14, promptly get in and realise in the ordinary course of its trade or business all its book debts apart from balances standing to the credit of any account with any bank or financial institution;

- 5.2.16 observe and perform, in all respects, all restrictive and other covenants, stipulations and burdens for the time being affecting its heritable, freehold and leasehold property and the mode of use and the enjoyment of the same and affecting its moveable and personal property and its ancillary and connected rights and will not, without the prior consent in writing of the Lender, enter into any onerous or restrictive obligations with regard thereto, make any structural or material alteration thereto, suffer to be done on any such property anything which is a "development" as defined in Section 55 of the Town and Country Planning Act 1990 or Section 26 of the Town and Country Planning (Scotland) Act 1997 as from time to time amended and/or do, suffer and/or omit to be done any act, matter and/or thing whereby any provisions of any Act of Parliament, order or regulation whatsoever from time to time in force affecting such property and/or rights shall be infringed;
 - 5.2.17 not negotiate, compromise, abandon or settle any claim for compensation (whether payable under any enactment or otherwise) or any claim under any Insurances in respect of any Secured Assets or any other material compensation, insurance or other claim; and
 - 5.2.18 not do or cause or permit to be done, nor omit to do, or allow the omission of, anything which may in any way materially and adversely depreciate, jeopardise or otherwise prejudice the value to the Lender of the Secured Assets or the Security hereby constituted.
- 5.3 The Company undertakes to comply to the satisfaction of the Lender with the following obligations in respect of insurance:-
- 5.3.1 the Company hereby undertakes, at its own expense, to insure and keep insured in its own name and in such manner as to protect the interests of the Lender as the Lender may require all of the Secured Assets whatsoever of an insurable nature with reputable underwriters or insurers against loss or damage by fire, civil commotion, explosion, earthquake, landslip, heave, aircraft and articles dropped therefrom, flood, storm, lightning, burst pipes, theft, malicious damage, impact and such other risks and contingencies as the Lender shall from time to time request to the full replacement value thereof from time to time, including, without limitation, architects', surveyors' and engineers' fees and all other professional fees and demolition charges and to maintain such other insurance policies containing like provisions for the protection of the Lender as are required by law or are normally maintained by prudent companies carrying on similar businesses;
 - 5.3.2 the Company undertakes, if the Lender in any case so requires, to use its best endeavours to obtain the agreement of the insurers not to cancel any such policy without first giving fourteen days' notice in writing to the Lender and to obtain confirmation in writing from the insurer that a breach by the Company will not vitiate the policy in respect of the Lender's interest or affect the Lender's right to claim under the policy;
 - 5.3.3 the Company undertakes to punctually pay all premiums and other sums payable in respect of all insurances effected by the Company, to comply with all warranties or other requirements relating thereto and to produce to (or, if required, deposit with) the Lender on demand all or any of the relevant policies and the receipts for the last premiums payable thereunder; and
 - 5.3.4 the Company undertakes to hold any moneys payable to or received by the Company on any insurance (whether maintained under any statutory provision, this Instrument or otherwise) upon trust to apply them in replacing or repairing the property or assets in respect of which the moneys are received in accordance with the Lender's instructions.
- 5.4 The Company hereby undertakes to notify the Lender in writing:

- 5.4.1 of its acquisition of any heritable, freehold or leasehold property and if required to do so by the Lender, deposit with the Lender during the continuance of this Instrument all charges and documents of title relating to that property;
- 5.4.2 in the event of any creditor executing diligence against the Company and/or the Secured Assets (whether effectual or not) or any distress or execution being levied or enforced against the Company or any third party debt order or freezing order being made and served on the Company; and
- 5.4.3 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 respect of an Insolvency Event,

immediately upon the occurrence thereof.

- 5.5 If the Company for any reason fails to observe or punctually to perform any of its obligations to the Lender hereunder, the Lender shall have power (but shall not be obliged), on behalf of or in the name of the Company or otherwise and at the Company's expense, to perform the relevant obligation and to take any steps which the Lender may (in its absolute discretion) consider appropriate with a view to remedying or mitigating the consequences of the failure, but so that the exercise of this power, or the failure to exercise it, shall in no circumstances prejudice the Lender's rights under this Instrument.

6 New Accounts

- 6.1 Subject to Clause 6.2, the Lender may appropriate all payments received in respect of the Secured Liabilities in reduction of any part of the Secured Liabilities as the Lender decides.
- 6.2 The Lender may open a new account or accounts after the security created by this Instrument has been discontinued or the Lender has demanded payment from the Company. Whether or not the Lender opens any such account no payment received by the Lender after such discontinuance or demand shall (if followed by any payment out of or debit to the relevant account) be appropriated towards or have the effect of discharging any part of the Secured Liabilities outstanding at the time of such discontinuance or demand.
- 6.3 The Lender may place to the credit of a suspense account for so long as he considers desirable any money received under this Instrument without any obligation to apply it towards discharge of the Secured Liabilities.

7 Payments

- 7.1 All sums payable by the Company hereunder shall be paid in full to the Lender (or to such other person as the Lender may direct) without any set off or counterclaim whatsoever and, except to the extent compelled by law, without any withholding or deduction. Where the Company is required by law to make any withholding or deduction, it shall pay to the Lender such additional sums to the extent necessary to ensure that the Lender receives on the due date a sum equal to the sum which it would have received had there been no such withholding or deducting. If the Lender subsequently receives a credit which is referable to the increased payment and which enhances its position, then it will reimburse the Company sufficient to redress the position up to the lower of (a) the increased payment and (b) the amount received, so long as doing so does not prejudice receipt or retention of such credit.
- 7.2 The Lender may:-
 - 7.2.1 refrain from applying or enforcing any other moneys, Security or rights held or received by it in respect of the Secured Liabilities or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Company shall not be entitled to the benefit of the same; and/or

7.2.2 hold in an interest bearing account any money received from the Company or on account of the Company's liability under this Instrument without any immediate obligation to apply such monies or any part thereof in or towards discharge of any of the Secured Liabilities.

7.3 All payments to be made under this Instrument shall be made in the currency or currencies in which the relevant Secured Liabilities are expressed to be payable by the Company.

8 Set-off

8.1 The Lender shall have a lien on all property of the Company held by the Lender whether for safe custody or otherwise.

8.2 In addition to any lien or right to which the Lender may be entitled by law the Lender may from time to time without notice and both before and after demand set off the whole or any part of the Secured Liabilities against any deposit or credit balance on any account of the Company with the Lender (whether or not that deposit or balance is due to the Company).

8.3 Despite any term to the contrary in relation to any deposit or credit balance on any account of the Company with the Lender that deposit or balance will not be capable of being assigned dealt with mortgaged or charged and will not be repayable to the Company before all the Secured Liabilities to the Lender have been discharged.

9 Enforcement

9.1 In addition to the Lender's statutory rights, at any time following the occurrence of an Enforcement Event, the floating charge created pursuant to this Instrument shall be immediately enforceable and the power to appoint an Administrator or (subject, if applicable, to Section 72A of the Insolvency Act) a Receiver of the Secured Assets shall be immediately enforceable and exercisable in relation to the Security created by the Company by or pursuant to this Instrument, and the Lender may then by instrument in writing appoint any person or persons (if more than one with power to act both jointly and severally) to be an Administrator or a Receiver of the Secured Assets. In addition, and without prejudice to the foregoing provisions of this Clause 9.1, in the event that any person appointed to be an Administrator or a Receiver as aforesaid shall be removed by a Court or shall otherwise cease to act as such, then the Lender shall be entitled so to appoint another person as an Administrator or Receiver in his place.

9.2 An Administrator appointed hereunder shall have and be permitted to exercise, in addition to and without limiting all of the powers of an administrator under the Insolvency Act, all the powers of a receiver under Schedule 2 of the Insolvency Act and a Receiver appointed in terms of this Instrument shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver and an administrative receiver under the Insolvency Act, all the powers of an administrator and an administrative receiver set out in Schedule 1 of the Insolvency Act, together with (in either case) the power to exercise any powers or rights incidental to ownership of the Secured Assets, including, without limitation, (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

9.2.1 implement and exercise all and any of the Company's powers and rights and obligations under any contract or other agreement forming part of the Secured Assets;

9.2.2 make any arrangement or compromise which he shall think expedient of, or in respect of, any claim by or against the Company;

9.2.3 promote or procure the formation of any new company or corporation;

- 9.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Company and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
 - 9.2.5 sell, feu, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Secured Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Company and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
 - 9.2.6 sell, feu, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Company any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
 - 9.2.7 convene a meeting of the members of the Company;
 - 9.2.8 acquire any property on behalf of the Company; and
 - 9.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Secured Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on an Administrator or a Receiver under or by virtue of or pursuant to this Instrument and exercise in relation to the Secured Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of the Company for all and any of the purposes aforesaid.
- 9.3 To the extent that any Secured Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement created by or pursuant to this Instrument, the Lender shall have the right, at any time after this Instrument becomes enforceable, to appropriate all or any part of those Secured Assets in or towards the payment or discharge of the Secured Liabilities. The value of any Secured Assets appropriated in accordance with this Clause 9.3 shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Lender may select (including, without limitation, independent valuation). The Company agrees that the methods of valuation provided for in this Clause 9.3 are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations. To the extent that any Secured Assets constitute Financial Collateral, the Company agrees that such Secured Assets shall be held or designated so as to be under the control of the Lender for all purposes of the Financial Collateral Regulations.
- 10 Office Of Receiver**
- 10.1 Any Receiver appointed under Clause 9 shall be the agent of the Company for all purposes and (subject to the provisions of the Insolvency Act) the Company alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for Secured Liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Lender shall not incur any liability therefor (either to the Company or any other person) by reason of the Lender making his appointment as such Receiver or for any other reason whatsoever.
 - 10.2 Any Receiver appointed under Clause 9 shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Such remuneration shall be payable by the Company alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Instrument.

11 Application of Security Proceeds

11.1 All monies received by the Lender in terms of this Instrument shall be applied in the following order of priority:

11.1.1 first, in or towards payment of or provision for all costs, charges and expenses properly incurred by the Lender;

11.1.2 second, towards application of the Secured Liabilities in such order and manner as the Lender sees fit; and

11.1.3 third, in payment of the surplus (if any) to the Company or other person entitled to it.

11.2 Clause 11.1 is subject to the payment of any claims having priority over this Instrument.

11.3 Clause 11.1 does not prejudice the right of the Lender to recover any shortfall from the Company.

12 Protection of Third Parties

No person (including, without limitation, a purchaser) dealing with the Lender or its agents will be concerned to enquire:

12.1 whether the Secured Liabilities have become payable;

12.2 whether any power which the Lender is purporting to exercise has become exercisable or is being properly exercised;

12.3 whether any money remains due in respect of the Secured Liabilities; or

12.4 how any money paid to the Lender is to be applied.

13 Further Assurance

The Company shall execute and do all such assurances, acts and things as the Lender may require for perfecting or protecting the Securities created by or pursuant to this Instrument over the Secured Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Lender and shall, in particular (but without prejudice to the generality of the foregoing), execute all fixed securities, floating charges, assignments, Securities, transfers, dispositions and assurances of the Secured Assets whether to the Lender (or its nominee) or otherwise and give all notices, orders and directions which the Lender may think expedient.

14 Protection of Security

14.1 The Security created by this Instrument shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Liabilities and shall remain in full force and effect and may not be revoked until the Secured Liabilities Discharge Date has occurred. As soon as practicable following the Secured Liabilities Discharge Date, the Lender shall execute and deliver, at the cost of the Company, a release of this Instrument and retrocess to the Company the Secured Assets.

14.2 The Security created by this Instrument shall be in addition to and shall not in any way prejudice or be prejudiced by any other Security, right or remedy which the Lender may now or at any time hereafter hold for all or any part of the Secured Liabilities.

14.3 No failure on the part of the Lender to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document

relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.

- 14.4 Each of the provisions in this Instrument shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever, the validity, legality and enforceability of the remaining provisions of this Instrument shall not in any way be affected or impaired thereby.
- 14.5 Neither the Security created by this Instrument nor the rights, powers, discretions and remedies conferred upon the Lender by this Instrument or by law shall be discharged, impaired or otherwise affected by reason of:
- 14.5.1 any increase in or waiver or discharge of the Secured Liabilities;
 - 14.5.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may have now or in the future from or against the Company or any other person in respect of any of the Secured Liabilities;
 - 14.5.3 any act or omission by the Lender 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 or unenforceability of any such Security or guarantee;
 - 14.5.4 any amendment, variation, restatement or supplement of or to, or novation, transfer or termination (in whole or in part) of, any document relating to the Secured Liabilities or any exercise by the Lender (in each case, in its absolute discretion) of its rights to refuse, grant, continue, vary, review, determine or increase any credit or facilities to the Company;
 - 14.5.5 any grant of time, indulgence, waiver or concession by the Lender to the Company or any other person;
 - 14.5.6 any arrangement or compromise entered into between the Lender and the Company or any other person;
 - 14.5.7 the winding-up, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name and/or style of the Company;
 - 14.5.8 the invalidity, illegality, unenforceability, irregularity or frustration of the Secured Liabilities or any other obligations of the Company;
 - 14.5.9 any legal limitation, disability, incapacity or similar circumstances relating to the Company;
 - 14.5.10 any claim or enforcement of payment from the Company;
 - 14.5.11 the existence of any claim, set-off or other right which the Company may have at any time against any person, whether in connection with the Secured Liabilities or otherwise; or
 - 14.5.12 any other act or omission done or omitted by any person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the Company's liability under this Instrument.
- 14.6 The Lender shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Instrument or by law, to:

- 14.6.1 take any action or obtain judgement or decree in any court against the Company;
or
- 14.6.2 make or file any claim to rank in a winding-up of the Company.

15 Power of Attorney

- 15.1 The Company hereby irrevocably appoints the Lender to be its mandatory and attorney for it and on its behalf and in its name or otherwise and as such to do all such things as the Company is obliged to do under and in terms of this Instrument but has not done and to create or constitute, or to make any alteration or addition or deletion in or to, any documents which the Lender (or its nominee) may require for perfecting or protecting the title of the Lender to the Secured Assets or for vesting any of the Secured Assets in the Lender (or its nominee) or any purchaser and otherwise generally to sign, seal and deliver and perfect any transfer, disposition, assignation and/or assurance or any writing, document or act which may be required or may be deemed proper by the Lender on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by the Lender of all or any of the Secured Assets.
- 15.2 The Company hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatory or attorney shall do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 15.

16 Examination of Secured Assets

- 16.1 At any time following the occurrence of an Enforcement Event, the Company shall permit the Lender and any persons appointed by it, during normal business hours and following receipt of reasonable prior notice in writing, to enter in or upon the property of or premises used or occupied by the Company or any part thereof at all times:
 - 16.1.1 to view the state and condition thereof or of any buildings, fixtures, fittings (including, without limitation, trade fixtures and fittings) or any plant and machinery;
 - 16.1.2 in the event of the Company failing to comply with any undertaking or obligation hereunder, to execute any works and do anything thereon necessary to ensure such compliance; and
 - 16.1.3 in the event of the Company failing so to do, to comply with any order, direction, requisition, permission, notice or other matter and to do all acts and things necessary or proper for complying therewith.
- 16.2 At any time following the occurrence of an Enforcement Event, the Company shall permit the Lender and any persons appointed by it, during normal business hours and following receipt of reasonable prior notice in writing, full access to the Secured Assets to carry out any survey, inspection, assessment or review of the Secured Assets and shall permit an inspection to be made and copies and extracts to be taken of books, accounts, records and documents relating to the Secured Assets or the undertakings and obligations of the Company under this Instrument and any costs, fees and expenses properly incurred by the Lender in connection with all such survey, inspection, assessment and/or review shall be payable by the Company.
- 16.3 At any time following the occurrence of an Enforcement Event, the Company shall at its own cost, if requested by the Lender, appoint such persons as the Lender may specify to investigate or review the financial affairs or operations of the Company and report thereon to the Lender.

17 Costs and expenses

- 17.1 The Company shall pay, on a full indemnity basis, immediately on demand all costs, charges, expenses and liabilities incurred by the Lender or to be incurred by the Lender or

any attorney, manager, agent or other person appointed by the Lender in connection with the preparation, negotiation, completion, execution, registration, perfection, modification, amendment, issue of waivers and consents under, enforcement and/or attempted enforcement, preservation of rights under, exercise or purported exercise of rights under or decision as to whether to exercise rights under, assignation, release or discharge of this Instrument or actions, proceedings or claims in respect of this Instrument and/or the Secured Assets which costs, charges and expenses shall form part of the Secured Liabilities.

18 Avoidance of Payments

18.1 Any amount which has been paid by the Company to the Lender and which is, in the opinion of the Lender, capable of being reduced or restored or otherwise avoided, in whole or in part, by virtue of any applicable law relating to insolvency for the time being in force shall not be regarded as having been irrevocably paid for the purposes of this Instrument.

18.2 Any settlement, discharge or release of this Instrument and/or the Secured Liabilities granted by the Lender to the Company shall be conditional upon no Security or payment to the Lender by the Company or any other person or any other transaction with any such person being terminated, avoided or reduced by virtue of any applicable law relating to insolvency for the time being in force. If that happens, the Lender shall be entitled to recover the Secured Liabilities from the Company and enforce this Instrument as if the settlement, discharge or release had not been given.

19 Notices

19.1 All notices, demands or other communications under or in connection herewith may be given by letter or facsimile or other comparable means of communication (but not email) addressed to the parties at their respective registered offices (or such other address or fax number as may be specified in writing from one party to the other). Any such communication will be deemed to be given as follows:

- (a) if personally delivered, at the time of delivery;
- (b) if by letter issued in any part of the United Kingdom to an address in the United Kingdom, at noon on the Business Day following the day such letter was posted (or in the case of airmail to an address outside the United Kingdom 5 Business Days after the envelope containing the same was delivered into the custody of the postal authorities); and
- (c) if by facsimile transmission or other comparable means of communication during the business hours of the addressee then on the day of transmission, otherwise on the next following Business Day.

19.2 In providing such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped first class, addressed and delivered to the postal authorities or that in the case of facsimile transmission or other comparable means of communication that a confirming hard copy was provided promptly after transmission.

20 Delegation

20.1 The Lender may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Instrument.

20.2 Any such delegation may be made upon any terms (including, without limitation, power to sub-delegate) which the Lender may think fit.

20.3 The Lender will not be in any way liable or responsible to the Company for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or

sub-delegate other than to the extent which the same is caused by the wilful default or gross negligence of any such delegate or sub-delegate.

21 Changes to the Parties

21.1 The Lender may assign, transfer and/or otherwise dispose of all or any part of its right, title and/or interest in and to, and/or any of its obligations or liabilities under, this Instrument to any person at any time.

21.2 The Company shall not be entitled to assign, transfer and/or otherwise dispose of all or any part of its right, title and/or interest in and to, and/or any of its obligations or liabilities under, this Instrument.

22 Miscellaneous

22.1 The Lender may disclose any information in its possession relating to the Company to its advisers or any applicable regulatory authority.

22.2 Without prejudice to any of their other rights, remedies or powers, the Lender shall be entitled to hold all sums which are now or which may at any time hereafter be at the credit of any account or accounts in the name of the Company with the Lender as security for the Secured Liabilities and to apply, at any time, without notice to the Company any such sums in and towards discharge of the Secured Liabilities which have matured on or at any time prior to that time. The Lender is not obliged to exercise their rights under this Clause 22.2, which shall be without prejudice, and in addition, to any right of set-off, compensation, combination of accounts, lien or other right to which they are at any time otherwise entitled (whether by operation of law, contract or otherwise).

22.3 If any subsequent charge or other interest affects any Secured Asset in breach of the terms of this Instrument, the Lender may open a new account with the Company. If the Lender does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest. As from that time all payments made to the Lender will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

23 Registration

The Company consents to the registration for preservation and execution in the Books of Council and Session of this Instrument and of any certificate referred to in Clause 2.3 hereof.

24 **Governing Law**

24.1 This Instrument and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including, without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

24.2 The parties hereto irrevocably agree that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Instrument or its subject matter or formation (including, without limitation, non-contractual disputes or claims). Nothing in this Clause 24 shall limit the right of the Lender to take proceedings against the Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.


IN WITNESS WHEREOF these presents consisting of this and the preceding 14 pages are subscribed as follows:

Subscribed for and on behalf of Graco (Scotland)
Limited

by PAUL MACDONALD
at GLASGOW
on 27 FEBRUARY 2020
before



Director

 _____ Paul Macdonald, Solicitor Harper Macleod LLP The Ca'd'oro 45 Gordon Street Glasgow G1 3PE	Witness Full Name Address
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