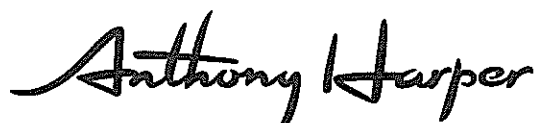


GENERAL SECURITY AGREEMENT

MAGSONS HARDWARE LIMITED

ODIN INVESTMENT LIMITED



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THIS DEED is made the 4th day of February

2020

PARTIES

BETWEEN **MAGSONS HARDWARE LIMITED** (company number 413641) (the "**Debtor**")
AND **ODIN INVESTMENT LIMITED** (company number 7867480) (the "**Creditor**")

BACKGROUND

- A The Creditor has provided or agreed to provide certain Secured Money to the Debtor.
- B The Debtor has agreed to execute this Deed charging the Collateral to secure payment of the Secured Money and the performance of all other obligations of the Debtor to the Creditor.

THIS DEED WITNESSES that in consideration of the Creditor providing or agreeing to provide the Secured Money to the Debtor, the Debtor agrees with the Creditor as follows:

1 **INTERPRETATION**

1.1 **Definitions:** In this Deed, unless the context otherwise requires:

"**Accession**" has the same meaning as in the PPSA;

"**Accounts Receivable**" has the same meaning as in the PPSA;

"**Agreement**" includes this Deed and any instrument, contract, deed, licence or legally enforceable arrangement, undertaking or understanding, (in each case whether or not in writing and whether express or implied);

"**Appropriate Rate**" means the rate of interest from time to time determined by the Creditor as being the appropriate rate for the transaction or default concerned, whether any consideration payable to or chargeable by the Creditor in respect of any transaction is a rate of interest, discount or some other consideration;

"**Building Law**" means any law, directive, regulation or code of any competent authority relating to any aspect of buildings or improvements to Land;

"**Chattel Paper**" has the same meaning as in the PPSA;

"**Collateral**" means the Personal Property and Other Property charged under this Deed or any Collateral Security granted by the Debtor;

"**Collateral Security**" means any Security Interest granted at any time by the Debtor to the Creditor and securing the Secured Money;

"**Company Records**" means books of account, financial and other records relating to the affairs and dealings of the Debtor and the Debtor's business;

"**Covenantor**" means the Debtor and any person who gives or has given a guarantee in respect of repayment of any Secured Money or the performance of any other obligation of the Debtor to the Creditor;

"Creditor's Representative" means any manager or acting manager of the Creditor, every attorney of the Creditor and any other person authorised from time to time by the Creditor to represent it;

"Environmental Consent" means any consent, permit, licence or authority of any kind granted by any competent authority under any Environmental Protection Law;

"Environmental Protection Law" means any law or directive relating to pollution, hazardous substances, the use of Land, air or water (including the carrying out of any activity or business on any Land), health, safety or the environment;

"Event of Default" means any of the events described in clause 12;

"Financing Statement" has the same meaning as in the PPSA;

"Land" has the same meaning as in the PPSA;

"Lease" means any agreement under which an asset is or may be used or operated by a person other than the owner of the asset and includes (without limitation) a charter, hire purchase or hiring arrangement, a "lease for a term of more than 1 year" within the meaning of the PPSA, a conditional purchase agreement and a right to use intellectual property or franchised property;

"Major Transaction" has the same meaning as in the Companies Act 1993;

"Other Monetary Debts" means all present and future monetary debts and claims (other than Accounts Receivable) due or owing to the Company and the benefit of all rights relating to those monetary debts and claims;

"Other Property" means all the Debtor's assets (including Land and interests in Land and personal property to which the PPSA does not apply at the relevant time), except for Personal Property;

"Personal Property" has the same meaning as in the PPSA but excludes any personal property to which the PPSA does not apply at the relevant time;

"PPSA" means the Personal Property Securities Act 1999;

"Property" means the land at 156-160 Central Park Drive, Waitakere City, Auckland;

"Receiver" means the person or persons appointed by the Creditor under this Deed as a receiver and manager of the Collateral;

"Security Interest" includes a mortgage, charge, pledge, lien, assignment by way of security, hypothecation, encumbrance or other security interest (including within the meaning of the Personal Property Securities Act 1999) given or arising in respect of any present or future assets and any arrangement the effect of which is to prefer any creditor over unsecured creditors, and any deferred purchase, title retention, finance lease, sale and repurchase or sale and leaseback arrangement or contractual right of set-off, but does not include:

- (a) any lien or encumbrance arising solely by operation of law; or
- (b) any title retention arrangement,

which in either case was created in the ordinary course of the Company's business and will be discharged within 30 days of its creation;

"Secured Money" means:

- (c) all loans, advances, credits, guarantees and any other financial accommodation provided by the Creditor to the Debtor (including by way of subscription for convertible notes) or to any other person on behalf of, at the request of, or at the direction of the Debtor;
- (d) all interest, fees, charges, commissions or costs owed to the Creditor by the Debtor or incurred by the Creditor on behalf of, at the request of, or at the direction of the Debtor or in relation to this Deed;
- (e) all monies paid by the Creditor on behalf of, at the request of, or at the direction of the Debtor for goods or services acquired by the Debtor or any other person;
- (f) the financing of goods on behalf of, at the request of, or at the direction of the Debtor;
- (g) all monies owing by the Debtor to the Creditor in respect of the Creditor entering into any Lease or other similar agreement in respect of any real or personal property as lessor or vendor with the Debtor or any other person on behalf of, at the request of or at the direction of the Debtor and acquiring such property for such purpose or on behalf of, at the request of, or at the direction of the Debtor taking an assignment (whether absolute or by way of mortgage) of any such Lease or other similar agreement and of any property relating thereto;
- (h) all monies owing by the Debtor to the Creditor in respect of the Creditor taking an assignment (whether absolute or by way of mortgage) of any debt or other obligation;
- (i) all other liabilities of the Debtor to the Creditor; and
- (j) any other sum of money owed to the Creditor by the Debtor for any other reason;

whether they:

- (k) are matured or unmatured, actual or contingent, quantified or unquantified including under any guarantee and indemnity the Debtor has provided the Creditor in respect of the liabilities or obligations of any other person;
- (l) relate to the Debtor alone or together with any other person or persons;
- (m) are owed or incurred by the Debtor as a principal debtor or as a guarantor or as an indemnifier;

and irrespective of:

- (n) when or how they become or became owing or were or are incurred; or
- (o) whether any moneys are held by the Creditor on account of the Debtor in a suspense account or are intended to be appropriated by the Creditor on behalf of the Debtor or any creditor of the Debtor (including the Creditor);

1.2 References: In this Deed, unless the context otherwise requires, any reference to:

an "**arrangement with creditors**" includes an arrangement under Part XV of the Companies Act 1993 and a compromise under Part XIV of the Companies Act 1993;

the "**assets**" of any person is to be read as a reference to the whole or any part of its business undertaking, property, assets (including its uncalled capital, unpaid capital and goodwill) and revenues (including the right to receive revenues) present or future;

"**costs**" includes legal, valuation, inspection and other costs, charges, disbursements, expenses, outgoings, fees, losses, liabilities and other similar amounts (including all legal

fees on a solicitor to client basis and stamp duty), and any duties, GST, or similar tax payable in respect of any of them;

a "**disposal**" means:

- (a) any sale, assignment, factoring, exchange, transfer, concession, loan, Lease, surrender of Lease, bailment, tenancy, licence, reservation, waiver, compromise, release, dealing with or in any asset; and
- (b) the granting of any option, right of first refusal, Security Interest or other right or interest of, or in, or in respect of, any asset;

and any agreement to do any of them (and "**dispose of**" is to be read accordingly);

the "**dissolution**" of any person includes the bankruptcy, winding-up or liquidation of that person;

a "**distribution**" is to a distribution as defined in section 2(1) of the Companies Act 1993;

a "**document**" includes any agreement in writing and any certificate, notice or document of any kind;

"**financial statements**" includes financial statements as defined in sections 8 and 9 of the Financial Reporting Act 1993 respectively;

"**GST**" is to the tax imposed by the Goods and Services Tax Act 1985;

a "**guarantee**" includes any guarantee, indemnity, performance bond, letter of credit or other assurance and any other obligation of any person, direct or indirect, to pay, purchase, or provide funds for the payment of (or to indemnify against the consequences of default in the payment of or otherwise to be responsible for) any indebtedness of any other person (and "guarantor" is to be read accordingly);

a "**holding company**" of any company means a holding company of that company as defined in section 5 of the Companies Act 1993;

"**indebtedness**" includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;

"**on demand**" means immediately on receipt by the recipient of demand made by notice signed by the Creditor or a Creditor's Representative and sent to the recipient in accordance with this Deed;

a "**person**" includes reference to any natural person, company, corporation, firm, partnership, joint venture, society, organisation or other group or association of persons (whether incorporated or not), trust, state or agency of state, statutory or regulatory body, local authority, government or governmental or semi-governmental body or agency (in each case whether or not having separate legal personality) and includes a party to this Deed;

a "**related company**" of any company means a company which is related to that company within the meaning of section 2(3) of the Companies Act 1993 or any company which would be considered an associate or related company of that company in terms of generally accepted accounting practice in New Zealand;

a "**related person**" of any company means a natural person who is:

- (a) a director of the company; or
- (b) a nominee, trustee for or relative of a director of the company; or

- (c) a person (or relative of a person) who controls the company;

the "**solvency test**" is to the test set out in section 4 of the Companies Act 1993;

a "**subsidiary**" of any company means any person which is:

- (a) a subsidiary of that company within the meaning of section 5 of the Companies Act 1993; or
- (b) an "in-substance subsidiary" of that company in terms of generally accepted accounting practice in New Zealand.

"**tax**" or "**taxes**" includes:

- (a) any tax, levy, impost, customs duty, excise duty, due, rates, charge, fee, deduction or withholding of any nature imposed, levied, collected, withheld or assessed by any person; and
- (b) all costs, charges, interest, penalties, fines and expenses in respect of any of them;

a "**working day**" means any day on which registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are open for general banking business in the place the Creditor has its principal place of business;

any legislation, statute, regulation, ruling, code, rules or ordinance (or any provision of any of them) includes reference to any modification, substitute for, consolidation or re-enactment of any of them, and any regulation, order in council or other instrument made under any of them in force in every country which has jurisdiction over any party or any of its assets;

an agreement between the parties (including this Deed) or other document includes that agreement or document as varied, novated or replaced;

any word or combination of words used in this Deed that is or are defined in the PPSA shall have the same meaning as in the PPSA;

any times or dates are to times and dates in New Zealand;

this Deed includes the schedules, annexures and recitals of this Deed;

recitals, clauses, subclauses, schedules or annexures are to the recitals, clauses, subclauses, schedules and annexures of this Deed;

a party is to a party to this Deed and to that party's successors, executors and permitted assignees.

- 1.3 **Accounting terms:** Unless otherwise expressly defined in this Deed or where the context otherwise requires, expressions used in this Deed in connection with accounting or reporting functions or the description of those functions have the meaning of those expressions in terms of generally accepted accounting practice in New Zealand and where applicable as defined from time to time in either:

- (a) Statements of Standard Accounting Practice issued by Chartered Accountants Australia and New Zealand (or any replacement or successor organisation); or
- (b) if a Statement of Standard Accounting Practice has been replaced or superseded by a financial reporting standard approved by or directive given by the Accounting Standards Review Board, that financial reporting standard or directive.

- 1.4 **Singular and plural:** In this Deed, unless the context otherwise requires, words (including words defined in this Deed) denoting the singular number only include the plural and vice versa.
- 1.5 **Gender:** In this Deed, unless the context otherwise requires, words denoting any gender include all other genders.
- 1.6 **Joint and several covenants:** Obligations, agreements, acknowledgements, warranties or covenants made by or expressed to be binding on more than one party binds any two or more of those parties jointly and each of them severally.
- 1.7 **Joint and several liability:** If any party to this Deed is more than one person, the liability of those persons under this Deed is joint and several.

2 CHARGING CLAUSE

- 2.1 **Charge:** The Debtor charges in favour of the Creditor all its:

- (a) present and after-acquired Personal Property, including the motor vehicles and aircraft (if any) listed in schedule 1; and
- (b) present and future Other Property;

as continuing security for the payment of the Secured Money and the performance of all other obligations of the Debtor to the Creditor. In respect of any Collateral that comprises Accounts Receivable or Chattel Paper, the Security Interest created by this Deed shall be deemed to be, and take effect as, a transfer. Upon request from the Creditor the Debtor will give immediate notice of such transfer to any person nominated by the Creditor.

- 2.2 **Nature of charge over Other Property:** The charge created by this Deed is:

- (a) as regards the Debtor's Other Property, a fixed charge; and
- (b) as regards Other Property to which the fixed charge referred to in clause 2.2(a) may not attach or be effective, a floating charge.

3 CRYSTALLISATION OF FLOATING CHARGE OVER OTHER PROPERTY

- 3.1 **Automatic crystallisation:** If at any time any Event of Default occurs, the Secured Money will immediately become due and payable and the floating charge created by this Deed under clause 2.2(b) over the Other Property will automatically become a fixed charge over all of the Other Property subject to the floating charge created by this Deed.
- 3.2 **Crystallisation on notice:** If at any time any other Event of Default has occurred and is continuing the Creditor may give notice to the Debtor declaring the Secured Money immediately due and payable. On the sending of that notice the floating charge created by this Deed under clause 2.2(b) over the Other Property will become a fixed charge over all of the assets subject to the floating charge over the Other Property created by this Deed.
- 3.3 **Decrystallisation:** If the floating charge created by this Deed under clause 2.2(b) over the Other Property has at any time become a fixed charge the Creditor may by written notice to the Debtor waive the conversion of the floating charge to a fixed charge in respect of any asset previously subject to the floating charge. On the sending of that notice that asset will cease to be subject to a fixed charge and will again be subject to a floating charge.

4 CONTINUING SECURITY

- 4.1 **Continuing security:** This Deed is a continuing security for the Secured Money whether or not any Secured Money is owing at any time. The Creditor may (or may continue to) provide Secured Money in reliance on this Deed.
- 4.2 **No deemed release:** The security created by this Deed will remain in full force and effect and will not be deemed to have been released or discharged until a final release of this Deed is executed by the Creditor.

5 COLLATERAL SECURITY

- 5.1 **Deed collateral:** This Deed is given in addition to and secures the same moneys as are intended to be secured by any Collateral Security. The Creditor may pursue its remedies and exercise its powers under this Deed or any Collateral Security separately or at the same time.
- 5.2 **No prejudice to Creditor:** This Deed is given in addition to any other security held by the Creditor. Nothing in this Deed is to prejudice any Collateral Security held at any time by the Creditor or any claim or right the Creditor has in respect of any Secured Money.
- 5.3 **Liability of guarantors:** The Debtor acknowledges that if it or any other person has given a guarantee in respect of repayment of any Secured Money or the performance of any other obligation of the Debtor to the Creditor, nothing the Creditor does or does not do will reduce the liability of the Debtor or any other guarantor to the Creditor or in any way prejudice any Collateral Security. The Debtor acknowledges that it is intended that the obligations of guarantors be unconditional and remain fully binding in all circumstances.

6 SECURED MONEY, INTEREST AND DEFAULT INTEREST

- 6.1 **Payment of Secured Money:** Unless otherwise agreed by the Creditor and the Debtor in any Agreement, the Debtor will pay the Secured Money to the Creditor on demand.
- 6.2 **Payment of interest:** Except to the extent that the Creditor and the Debtor have otherwise agreed in any Agreement, the Debtor will pay interest on Secured Money to the Creditor:
- (a) at the Appropriate Rate;
 - (b) calculated on the daily balance (without any set-off) of the relevant Secured Money from the time of the provision of that Secured Money or (where the relevant Secured Money is not provided to the Debtor) from the time when the Debtor first became liable to pay that Secured Money to the Creditor;
 - (c) on demand;
- with unpaid interest compounding daily.
- 6.3 **Payment of default interest:** Except to the extent that the Creditor and the Debtor have otherwise agreed in any Agreement, if any Secured Money is not paid on the due date the Debtor will pay default interest on that Secured Money to the Creditor:
- (a) at an Appropriate Rate;
 - (b) calculated on the daily balance of that Secured Money from the date when the Debtor should have paid that Secured Money or (where the Debtor is not principally liable to pay that Secured Money) from the time when the Debtor first became liable to pay that Secured Money to the Creditor;
 - (c) on demand;
- with unpaid default interest compounding daily.

- 6.4 **Payment without set-off:** In all cases, unless otherwise agreed by the Creditor and the Debtor, any payment of any Secured Money, interest or default interest will be made without set-off, deduction or counterclaim.
- 6.5 **No obligation to provide Secured Money:** Nothing in this Deed will oblige the Creditor to provide any Secured Money to the Debtor or any other person.

7 COMPANY'S UNDERTAKINGS

- 7.1 **Undertakings:** The Debtor undertakes to the Creditor that until this Deed is released it will:
- (a) **Preserve corporate existence:** Do everything necessary or desirable to preserve its corporate existence, except if, with the prior written consent of the Creditor (which will not be unreasonably withheld), it is dissolved for the purpose of an amalgamation or reconstruction;
 - (b) **Comply with laws:** Comply with all laws applicable to it, the non-compliance with which would have a material adverse effect on it or on the enforceability of this Deed, any Collateral Security or any other Agreement;
 - (c) **Comply with other agreements:** Comply with its obligations under any Agreement and any Collateral Security and under any other agreement or document creating a Security Interest over any of its assets;
 - (d) **Procure compliance by Covenantors:** Use its best endeavours to procure every other Covenantor to comply with its obligations to the Creditor;
 - (e) **Carry on business:** Carry on its business in a proper and efficient manner and not without the prior written consent of the Creditor (which will not be unreasonably withheld) discontinue or materially alter the general character of its business or engage in a business not carried on by it as at the date of this Deed;
 - (f) **Maintain assets, licences and consents:** Maintain its assets in good condition and comply with the terms and conditions of, keep in force and renew all Leases, licences, Environmental Consents and other consents and authorisations required for the purposes of carrying on its business;
 - (g) **Insure assets:** Keep all of its assets that are of an insurable nature insured with an insurer approved by the Creditor against all usual risks or risks which the Creditor may reasonably require for the full insurable value of the relevant asset (and in the case of buildings or fixed improvements, full reinstatement and replacement value) in its name and the name of the Creditor for their respective rights and interests;
 - (h) **Insure special risks:** Take out and maintain any further insurance with an insurer approved by the Creditor that the Creditor reasonably considers necessary or desirable to preserve the value of this Deed and any Collateral Security (including without limitation contractor's all risks insurance, public liability insurance, loss of profits insurance and environmental impairment insurance);
 - (i) **Pay outgoing:** Pay all rates, rents, taxes, duties, charges and outgoing payable by it as they fall due (unless they are contested in good faith by the taking of appropriate proceedings) and provide any evidence of their payment that the Creditor may reasonably request;
 - (j) **Not remove assets:** Not remove any of its assets from New Zealand;
 - (k) **Pay collections:** If required by the Creditor to do so, pay to the Creditor all moneys which it may receive in respect of its Accounts Receivable and Other Monetary Debts;

- (l) **Negative pledge:** Not create any Security Interest over any of its assets other than the Security Interest created by this Deed or any Collateral Security or consented to by the Creditor in writing and in respect of which the priority of the Security Interest created by this Deed and any Collateral Security has been established to the satisfaction of the Creditor;
- (m) **Not re-issue debenture:** Not re-issue any debenture it has redeemed;
- (n) **Not dispose of assets:** Not without the prior written consent of the Creditor (which will not be unreasonably withheld) dispose of (whether by way of one transaction or a series of transactions and whether at one time or over a period of time):
 - (i) any of its Personal Property, except where the Personal Property is Inventory and the disposal is in the ordinary course of the Debtor's business and on an arms length basis for full value;
 - (ii) any of its assets subject to the fixed charge created by this Deed; or
 - (iii) any of its assets subject to the floating charge created by this Deed except in the ordinary course of business of the Debtor's business and on an arms length basis for full value;
- (o) **Not factor debts:** Not without the prior written consent of the Creditor (which will not be unreasonably withheld) factor or otherwise dispose of (whether by way of one transaction or a series of transactions and whether at one time or over a period of time) any of its Accounts Receivable or Other Monetary Debts except by collecting them in the ordinary course of carrying on its business;
- (p) **No transactions with related parties:** Not without the prior written consent of the Creditor (which will not be unreasonably withheld):
 - (i) provide services or dispose of any asset to or purchase any asset or accept services from a related company or related person otherwise than in the ordinary course of business and for proper value; or
 - (ii) lend money or provide other financial accommodation to a related company or related person; or
 - (iii) give a guarantee in respect of the obligations of a related company or related person to any person other than the Creditor;
- (q) **Give notice:** Promptly and fully inform the Creditor as soon as it becomes aware of:
 - (i) any Security Interest over any of its assets becoming enforceable;
 - (ii) the occurrence of any Event of Default or any event which with the passing of time or giving of notice would become an Event of Default; or
 - (iii) any event which may have a material adverse effect on its ability to perform its obligations to the Creditor or the rights of the Creditor under this Deed, any Collateral Security or any other Agreement.
- (r) **Maintain capital:** Not without the prior written consent of the Creditor:
 - (i) issue shares or other capital or acquire shares in another company or any interest in a limited partnership;
 - (ii) reduce the capital contributed by its shareholders; or

- (iii) enter into any arrangement with any of its shareholders limiting its ability to call up or obtain payment of any moneys payable in respect of its shares; or
- (iv) offer to acquire or acquire any of its own shares; or
- (v) give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security, or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any of its own shares, or, where it is a subsidiary company, the shares of its holding company; or
- (vi) make any distribution except:
 - (A) out of net profits after payment of income tax; and
 - (B) if an Event of Default has not occurred or will not occur as a result of declaring or making the distribution; or
- (vii) do anything which may give any of its shareholders a right to require it to purchase their shares in its capital; or
- (viii) cancel or reduce the liability of a shareholder to the Debtor in respect of shares held by that shareholder;

and will at all times ensure that it satisfies the solvency test;

- (s) **No further indebtedness:** not, without the prior written consent of Creditor, incur any indebtedness except for trade indebtedness incurred in the ordinary course of the Debtor's business;
- (t) **Obtain payment of capital:** If required by the Creditor to do so, obtain payment of any moneys payable in respect of its shares in the manner the Creditor directs;
- (u) **Deliver financial statements:** Deliver to the Creditor as soon as they are available (and in any event within 60 days of the end of each financial year and half year) a copy of its financial statements for that year or half year, together with a copy of the auditor's report (if any) in the case of the annual financial statements and, where the Creditor so requires, deliver such statements and reports on a consolidated or group basis. The Debtor must ensure all such financial statements at all times:
 - (i) are prepared in accordance with current accounting practice; and
 - (ii) give a true and fair view of its financial position and operations (and those of its subsidiaries, if any) as at the date, and for the period, to which the financial statements relate; and
 - (iii) together with the notes to them, disclose all liabilities (actual or contingent) of the Debtor and its subsidiaries (if any); and
 - (iv) are prepared and delivered to all relevant persons within the period in which they are required by law or under any agreement to be delivered;
- (v) **Provide Company Records and other information:**
 - (i) Keep proper Company Records and, if the Creditor so requires, have the Company Records audited;
 - (ii) Make the Company Records available for inspection or copying at any reasonable time by the Creditor or any Creditor's Representative;

- (iii) Give the Creditor or any Creditor's Representative any other information relating to the Company Records, business and prospects as the Creditor or that Creditor's Representative may reasonably require; and
 - (iv) Deliver to the Creditor a copy of all information or notices sent to any of its shareholders at the time that information or notice is sent to shareholders;
- (w) **Allow inspection:** Permit any Creditor's Representative to inspect the Collateral at any reasonable time;
- (x) **Obtain building warrants of fitness:** If required by any law, competent authority or the Creditor, obtain a building warrant of fitness issued under the Building Act 2004 for any of its buildings to which the Building Act 2004 applies;
- (y) **Preserve Environmental Consents:** Take all steps necessary or desirable to ensure the continuation of any Environmental Consent it holds and will:
 - (i) immediately advise the Creditor of any notification of any application, plan change or other matter it receives or becomes aware of which relates to or may affect it;
 - (ii) oppose any notification, application, plan change or other matter which would have a material adverse effect on it or the value of its assets or restrict or prevent any activity or business it carries out;
 - (iii) comply with all enforcement orders, abatement notices or other requirements issued to it under any Environmental Protection Law which relates to it or any Environmental Consent it holds; and
 - (iv) comply with or otherwise ensure the compliance with all conditions applying to all Environmental Consents it holds;
- (z) **Carry out compliance programme:** Put in place and duly carry out procedures to adequately monitor compliance with any Environmental Consent it holds or any Environmental Protection Law that applies to it or any of its assets;
- (aa) **Accessions and fixtures:** Not allow any Collateral:
 - (i) to be or become an Accession other than to Collateral; or
 - (ii) to become attached to Land or buildings other than Collateral in such a way as to become a fixture,

except for fixtures and fittings attached to the Property if approved in writing by the Creditor;
- (bb) **Protect security:** Do everything (including things outside New Zealand) necessary or which the Creditor reasonably requires to maintain, preserve and protect:
 - (i) the Collateral and its value; and
 - (ii) the Debtor's and the Creditor's rights, interests and priorities in the Collateral.

If anyone, other than the Creditor, lodges a caveat or registers a Financing Statement in relation to a Security Interest not permitted by this Deed, the Debtor must do everything in its power to remove it, and, in addition, in relation to Collateral which is Securities where the Creditor is the holder of the Securities then the Creditor may:

- (iii) pay such calls or other amounts it considers desirable to maintain the value of the Securities; and
 - (iv) accept offers for such Securities where in the Creditor's opinion failure to accept such offer may have a material adverse effect in accordance with clause 12.1(t); and
 - (v) exercise all other rights which it may have as holder of the Securities;
 - (cc) **Acquisition of assets:** Immediately notify the Creditor if it enters into an agreement to purchase, or otherwise acquire, an estate or interest in Land (other than a Lease for a term (including all renewal options) of less than three years);
 - (dd) **Major transactions:** Not enter into a Major Transaction unless that Major Transaction has been unanimously approved by the shareholders of the Debtor (or, if the Creditor so consents, by a special resolution within the meaning of the Companies Act 1993);
 - (ee) **Subsidiary:** Immediately notify the Creditor if it creates or acquires a subsidiary. If required by the Creditor the Debtor must immediately do everything necessary to ensure that the subsidiary gives a first-ranking Security Interest over its assets and a guarantee, each in the form specified by the Creditor and to the satisfaction of the Creditor; and
 - (ff) **Not join a GST group:** Not become a member of a group of companies or persons under Section 55 of the Goods and Services Tax Act 1985 that includes any company or person who has not granted to the Creditor a Collateral Security creating a Security Interest over all of its assets.
- 7.2 **Company not to permit breaches:** Any undertaking by the Debtor not to do any thing also constitutes an undertaking not to suffer, permit, cause or assist any other person to do that thing in respect of the Debtor or any of its assets.

8 BUILDING AND ENVIRONMENTAL LAW

- 8.1 **Building Law:** If the Creditor receives notice of any breach or likely breach of any Building Law by the Debtor or reasonably believes that any breach has occurred or is likely to occur the Creditor may, at the cost of the Debtor:
- (a) enter the relevant Land or building with any employees, consultants, workmen or contractors to inspect that Land or building or to carry out any works the Creditor reasonably believes are required to ensure compliance with that Building Law; or
 - (b) obtain any reports the Creditor reasonably considers necessary or desirable to enable it to determine whether or not any breach of any Building Law has occurred or is likely to occur.
- 8.2 **Environmental audit:** If the Creditor:
- (a) receives notice of any breach or matter which it reasonably believes may result in breach of any Environmental Protection Law by the Debtor; or
 - (b) reasonably believes that any breach has occurred or might occur; or
 - (c) reasonably believes that the Debtor is in possession of any hazardous substance, the presence of which requires investigation or remedy under any law or which is or becomes regulated by any law;

the Creditor may, at the cost of the Debtor, obtain an independent environmental audit of the activities of the Debtor necessary or desirable to:

- (d) ensure compliance with the obligations of the Debtor under all Environmental Protection Laws, Environmental Consents and this Deed; and
 - (e) identify potential contravention of any Environmental Protection Law or Environmental Consent by the Debtor;
- 8.3 **Company to assist and comply:** The Debtor will do everything necessary or desirable to enable any report under clause 8.1 to be obtained or any audit under clause 8.2 to be undertaken in a timely manner and will as soon as reasonably possible implement or comply with the recommendations of the report or audit.
- 8.4 **Indemnity:** The Debtor will indemnify the Creditor, any Creditor's Representative, Investigator or Receiver against all liability, costs and expenses they may incur arising from or in connection with any breach of any Environmental Protection Law or Building Law by the Debtor.

9 PERFORMANCE OF THE DEBTOR'S OBLIGATIONS

- 9.1 If:
- (a) the Debtor fails to perform any of its obligations under this Deed, any Collateral Security or any other Agreement; or
 - (b) the Creditor considers it necessary or desirable to perform any obligation, pay any money or incur any expenses in order to protect its interests under this Deed, any Collateral Security or any other Agreement;

the Creditor may perform that obligation, pay that money or incur those expenses.

10 FURTHER ASSURANCES AND POWER OF ATTORNEY

- 10.1 **Perfection of security:** The Debtor will do everything that the Creditor may require to perfect the Creditor's security under this Deed.
- 10.2 **Company to assist:** The Debtor will at any time after an Event of Default has occurred and is continuing, do everything that the Creditor may require to assist in the realisation of the Collateral and the exercising of any power of the Creditor, any Creditor's Representative, any Investigator or any Receiver.
- 10.3 **Power of attorney:** The Debtor irrevocably appoints the Creditor, any Creditor's Representative and any Receiver severally to be its attorney to:
- (a) do anything which the Debtor agrees to do under this Deed, any Collateral Security or any other Agreement; and
 - (b) do anything else which the Creditor, Creditor's Representative or Receiver thinks necessary or desirable to:
 - (i) protect the interests of the Creditor under this Deed, any Collateral Security or any other Agreement; or
 - (ii) exercise any power of the Creditor, Creditor's Representative or Receiver.
- 10.4 **No obligation to exercise powers:** Neither the Creditor, Creditor's Representative or Receiver will be obliged to exercise any power given to them under this clause 10.
- 10.5 **Attorneys not liable:** Neither the Creditor, Creditor's Representative or Receiver will be liable to the Debtor for any loss arising from its exercise or failure to exercise any powers under this clause 10.

- 10.6 **Application of moneys:** To the extent permitted by law, all money received or recovered by the Creditor, any Creditor's Representative or any Receiver as attorney under this Deed shall be applied in the manner and order determined by the Creditor.

11 INVESTIGATOR

- 11.1 **Appointment:** If required by the Creditor to do so, the Debtor will appoint any person or persons nominated by the Creditor to investigate the Debtor and its affairs.
- 11.2 **Terms of appointment:** Every Investigator is to be appointed on terms approved by the Creditor. The Investigator's remuneration is to be paid by the Debtor.
- 11.3 **Agent of the Debtor:** Every Investigator will be the agent of the Debtor and not the Creditor.
- 11.4 **Powers:** Every Investigator will (subject to any limitation in his or her appointment) have all the powers necessary or desirable to investigate and report to the Creditor on the affairs and financial position of the Debtor and the condition of the Collateral, including the power to:
- (a) **Inspect:** Inspect the Collateral or the Company Records (and take copies of any Company Records) at any reasonable time;
 - (b) **Make enquiries:** Make enquiries relating to the affairs and financial position of the Debtor and the condition of the Collateral of:
 - (i) any officer, agent or employee of the Debtor;
 - (ii) any contractors, sub-contractors, customers, debtors, creditors or any other business associate of the Debtor;
 - (iii) any other person with whom the Debtor may be dealing or who may have knowledge of the Debtor's affairs or financial position; and
 - (iv) the Debtor's banks, auditors, solicitors, accountants, sharebrokers or other consultants or advisers;and to inspect and take copies of any file or document held by any of those persons relating to the Debtor which the Debtor would be entitled to inspect or copy;
 - (c) **Other investigations:** Make any other enquiry the Investigator thinks necessary or desirable to ascertain whether the Debtor is in or is about to go into default of any of its obligations under this Deed, any Collateral Security, any other Agreement, or any other agreement binding the Debtor or any of its assets; and
 - (d) **Report to Creditor:** Notwithstanding any duty owed to the Debtor, report on his or her investigations to the Creditor and make recommendations to the Creditor or the Debtor.
- 11.5 **Effect of report:** The Debtor acknowledges that the consequences of the Investigator's report or any recommendations made by the Investigator may be detrimental to the Debtor.
- 11.6 **Co-operation:** The Debtor will:
- (a) ensure that all persons having possession or control of its Company Records or any other information relating to the affairs and financial position of the Debtor and the condition of the Collateral fully co-operates with the Investigator; and

- (b) complete any authorities the Investigator may require to permit the Investigator to conduct his or her investigations.
- 11.7 **Removal and replacement of Investigator:** The Debtor may at any time with the consent of the Creditor (which will not be unreasonably withheld), and if required by the Creditor to do so will, remove any Investigator it has appointed and, if the Creditor requires, appoint another person in his or her place.

12 EVENTS OF DEFAULT

12.1 Each of the following events will be an Event of Default:

- (a) **Payment Default:** Any Covenantor fails to pay any Secured Money outstanding to the Creditor when due or in the manner required;
- (b) **Non-Payment Default:** The Debtor fails to perform or comply with any of its other obligations under this Deed or any Collateral Security or other Agreement between the Creditor and the Debtor;
- (c) **Other breach:** Any Covenantor (other than the Debtor) fails to perform or comply with any of its obligations under any Collateral Security or any other agreement between the Creditor and that Covenantor other than an obligation relating to the payment of any money and that failure, if capable of being remedied, is not remedied within five working days;
- (d) **Representation untrue:**
 - (i) Any representation, warranty or statement of fact made, deemed to be made or to be repeated by any Covenantor to the Creditor; or
 - (ii) Any information provided by any Covenantor to the Creditor;proves to be untrue or incorrect in any way materially adverse to the interests of the Creditor;
- (e) **Cross default:**
 - (i) Any indebtedness of any Covenantor is not paid when due (or within any applicable period of grace), except if that failure to pay is caused by a mistake or liability to pay is contested in good faith by the taking of appropriate proceedings; or
 - (ii) Any indebtedness of any Covenantor becomes (or becomes capable of becoming) due prior to its stated maturity; or
 - (iii) Steps are taken to enforce any Security Interest for any indebtedness of any Covenantor; or
 - (iv) Any event of default in any Collateral Security or any other agreement between the Creditor and any Covenantor occurs and is not remedied;
- (f) **Authorisation withdrawn:** Any act, Environmental Consent it holds, other consent or authorisation necessary or desirable to:
 - (i) enable any Covenantor to lawfully enter into, execute, exercise its rights under or perform its obligations under this Deed, any Collateral Security or any other agreement between it and the Creditor; or
 - (ii) ensure that the obligations of any Covenantor under this Deed, any Collateral Security or any other agreement between it and the Creditor are legal, valid, binding and enforceable in accordance with their terms; or

- (iii) ensure that any Covenantor can carry on its business as it was being or was proposed to be conducted as at the date of this Deed;

is not done, is revoked or cancelled or is varied in any way materially adverse to the interests of the Creditor;

- (g) **Distress:** Any distress, execution or other process is levied, issued or enforced on any Covenantor or against any of the assets of any Covenantor and is not discharged or stayed within five working days, except when contested in good faith by the taking of appropriate proceedings;
- (h) **Judgment unsatisfied:** Any order for payment or judgment obtained against any Covenantor remains unsatisfied for a period of five working days, except when contested in good faith by the taking of appropriate proceedings;
- (i) **Arrangement with creditors:** Without the prior written consent of the Creditor (which will not be unreasonably withheld), any Covenantor convenes a meeting of its creditors or proposes or enters into any arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (j) **Appointment by creditors:** Any creditors' committee, investigating accountant or similar person is appointed by or at the request of any creditor or any group of creditors to investigate the affairs of or run the business of any Covenantor;
- (k) **Receiver etc:** A receiver, manager, receiver and manager, official manager, provisional liquidator, liquidator or similar person is appointed in respect of any Covenantor or in respect of any asset of any Covenantor;
- (l) **Dissolution:** The Debtor or the Covenantor is a company, an application is filed, or an order is made, or a resolution is proposed or passed, for the dissolution of the Debtor or any Covenantor, or for the appointment of a liquidator of the Debtor or of any Covenantor unless:
 - (i) the resolution is proposed or passed for the purpose of (and is followed by) an amalgamation or reconstruction previously approved in writing by the Creditor; or
 - (ii) the application made or resolution proposed is, in the reasonable opinion of the Creditor, frivolous or vexatious;
- (m) **Bankruptcy:** In the case of any Covenantor who is a natural person:
 - (i) that Covenantor commits an act of bankruptcy; or
 - (ii) a petition for an order of bankruptcy or sequestration of the estate of that Covenantor is presented (other than a petition which is, in the reasonable opinion of the Creditor, frivolous or vexatious);
- (n) **Corporations (Investigation and Management) Act:** A recommendation is made by the Financial Markets Authority to appoint a statutory manager of any Covenantor or an associated person of any Covenantor under the Corporations (Investigation and Management) Act 1989, or any Covenantor or an associated person of any Covenantor is declared at risk under the Corporations (Investigation and Management) Act 1989;
- (o) **Transfer of Shares:** Without the prior written consent of the, the shareholders of any corporate Covenantor as at the date of this Deed cease to be the beneficial holders of all the shares in the capital of that corporate Covenantor;
- (p) **Change in control:** Without the prior written consent of the Creditor, there is any change in the shareholding of the Debtor (including by the issue of new shares) or in the effective management or control of any corporate Covenantor;

- (q) **Amalgamation:** Without the prior written consent of the Creditor, a proposal is made or a resolution is passed for the amalgamation of any corporate Covenantor with any other company under Part XIII of the Companies Act 1993;
- (r) **Illegality:** Any provision of this Deed, any Collateral Security, any other Agreement or any other agreement between the Creditor and any Covenantor is or becomes (or is held to be or to have become) illegal, invalid, unenforceable, void or voidable in any respect;
- (s) **Performance unlawful or impossible:** It becomes unlawful or impossible for any Covenantor to perform any of its obligations under this Deed, any Collateral Security, any other Agreement or any other agreement between that Covenantor and the Creditor;
- (t) **Material adverse change:** Any event occurs which, in the opinion of the Creditor, has a material adverse effect on the ability of any Covenantor to perform its obligations to the Creditor or the rights of the Creditor against any Covenantor under this Deed, any Collateral Security, any other Agreement or any other agreement between that Covenantor and the Creditor;
- (u) **Compulsory acquisition:** All or any part of the Collateral is compulsorily acquired or any step is taken for its acquisition, or possession (including as that term is defined in the PPSA) of any part of the Collateral is taken by a holder of a Security Interest other than the Creditor;
- (v) **Information:** Any information provided by the Debtor to the Creditor is untrue, misleading or deceptive in any material respect;
- (w) **At risk:** The Creditor considers that any part of the Collateral is at risk within the meaning of section 109 of the PPSA;
- (x) **Covenantor:** A Covenantor gives notice terminating its obligations to the Creditor;
- (y) **Minority buy-out:** A shareholder of the Debtor gives notice to the Debtor requiring it to purchase that shareholder's shares pursuant to section 111 of the Companies Act 1993;
- (z) **Investigation:** An investigation into all or part of the affairs of the Debtor or a corporate Covenantor commences under companies legislation in circumstances material to its financial condition; or
- (aa) **Pay debts of another company:** An order is made requiring the Debtor, or any subsidiary of the Debtor, to pay or contribute to any debts of another company.

13 ENFORCEMENT OF SECURITY

13.1 **Creditor's powers:** At any time after an Event of Default has occurred and is continuing the Creditor may:

- (a) **Call Up:** Declare all or any part of the Secured Money immediately due and payable despite any provision to the contrary in any other Transaction Document. Upon the Creditor giving the Debtor notice of such declaration the Debtor must immediately pay the relevant Secured Money that is subject to the declaration;
- (b) **Termination:** Terminate any obligation the Creditor has to a Covenantor under any Transaction Document;
- (c) **Dispose:** Dispose of any of the Collateral in any manner and on any conditions it thinks fit;

- (d) **Buy in:** Buy in and resell any of the Collateral without being liable for any loss incurred;
 - (e) **Lease:** Lease any Collateral for any term at the rent and on any other terms and conditions as it thinks fit;
 - (f) **Employ consultants:** Employ any auctioneers, salesmen and other consultants it thinks necessary or desirable for the purpose of disposing of, buying in or reselling the Collateral;
 - (g) **Terms of sale:** Leave the purchase price payable under any disposal of any Collateral owing over any period of time as it thinks fit with or without interest and with or without security;
 - (h) **Execute transfers:** Execute all documents and instruments necessary or desirable to effect any disposal of any Collateral; and
 - (i) **Exercise powers:** Exercise and enforce all other powers (including the power of sale under section 109 of the PPSA), rights and remedies that are conferred on mortgagees by law.
- 13.2 **Validity of actions:** Anything done by the Creditor under this clause 13 will be as valid and effective as if it had been done by the Debtor itself.
- 13.3 **Limit on accountability:** The Creditor will only be accountable for the moneys actually received by it from any disposal of any Collateral.
- 13.4 **Company to remain liable:** The Debtor will remain liable for the difference between the amount actually received by the Creditor on any disposal of any Collateral and the amount which is owing to the Creditor in respect of that disposal.
- 13.5 **Company's remedy:** The only remedy of the Debtor in respect of any wrongful act or omission by or on behalf of the Creditor is to be a claim for damages.
- 13.6 **Creditor not liable as mortgagee in possession:** The Creditor will not be liable:
- (a) to account as mortgagee in possession; or
 - (b) for anything except actual receipts; or
 - (c) for any loss on disposal of any Collateral; or
 - (d) for any loss or accident occurring in the course of carrying on the business of the Debtor; or
 - (e) for any other negligence, default or omission;
- for which a mortgagee in possession might be liable.
- 13.7 **Validity of notices:** The Debtor will not have any claim against the Creditor in respect of the invalidity of any notice or demand, any error or omission in any notice or demand or any act or omission by the Creditor based on an invalid or incorrect notice or demand.
- 13.8 **Surrender of Collateral:** The Creditor may at any time give up possession of any Collateral.

14 RECEIVER

- 14.1 **Appointment:** At any time after an Event of Default has occurred and is continuing, the Creditor may by notice in writing signed by the Creditor or a Creditor's Representative appoint any person or persons to be a receiver and manager of the Collateral.

- 14.2 **Nature of appointment:** Where more than one person is appointed as Receiver, those persons may be appointed as Receiver jointly and severally or jointly. If the appointment of two or more persons as Receiver does not state that they are appointed jointly, they will be deemed to have been appointed jointly and severally.
- 14.3 **Agent of the Debtor:** Every Receiver will be the agent of the Debtor and not the Creditor. The Debtor, and not the Creditor, will be responsible for anything any Receiver does or does not do.
- 14.4 **Powers:** Subject to any limitations contained in his or her appointment, every Receiver will (in addition to his or her statutory powers) have the power to:
- (a) **Possession:** Take possession of the Collateral;
 - (b) **Carry on business:** Carry on the business of the Debtor;
 - (c) **Borrow:** Borrow any moneys which the Receiver may require for the purpose of exercising any of his or her powers and, with the prior written consent of the Creditor, grant a Security Interest over any Collateral to secure those borrowings;
 - (d) **Maintain and insure:** Repair, insure and to do anything else which the Debtor might do in the ordinary course of its business to protect and improve the Collateral;
 - (e) **Employees:** Employ and dismiss any person on any terms he or she think fit for the purpose of carrying on the business of the Debtor;
 - (f) **Disposals:** Dispose of any Collateral in any way and on any terms he or she thinks fit;
 - (g) **Leases:** Lease or bail any Collateral for the term, and rent and on any other terms as the Receiver thinks fit and to vary and surrender Leases of any Collateral;
 - (h) **Receipts:** Give receipts for moneys received and do anything else necessary or desirable to dispose of any Collateral;
 - (i) **Contractual rights:** Exercise the powers of the Debtor under any agreement entered into by the Debtor or under which the Debtor has any rights;
 - (j) **Calls:** If the Debtor is a company, require the shareholders and contributories of the Debtor to make payment of any sum payable by them in respect of the shares of the Debtor;
 - (k) **Consents:** Obtain, renew, dispose of and deal with any Environmental Consent, consent, licence or other authority relating to any Collateral or the business of the Debtor;
 - (l) **Disputes:** Compromise, settle or submit to arbitration any matter which may arise in connection with the business of the Debtor or any Collateral;
 - (m) **Proceeding:** Bring or compromise any legal proceedings relating to the business of the Debtor or any Collateral;
 - (n) **Documents and agreements:** Execute any document and enter into, vary or cancel any agreement in the name of and on behalf of the Debtor in the course of exercising his or her powers, and use the Debtor's common seal for the purpose of executing any document;
 - (o) **Delegate:** Delegate to any person as agent or attorney any of his or her powers under this Deed or at law and discharge that delegate;

- (p) **Common receiver:** With the prior written consent of the Creditor (which will not be unreasonably withheld), accept appointment by another creditor of the Debtor as a receiver and manager of any Collateral;
 - (q) **Other powers:** Do anything else in connection with the business of the Debtor or the Collateral that the Receiver could do if he or she was the beneficial owner of the Collateral and carried on the business of the Debtor for his or her own benefit, without being liable for any loss or damage which may result.
- 14.5 **Company's remedy:** The only remedy of the Debtor in respect of any wrongful act or omission by or on behalf of any Receiver is to be a claim for damages.
- 14.6 **Receiver not liable as mortgagee in possession:** No Receiver will be liable:
- (a) to account as mortgagee in possession; or
 - (b) for anything except actual receipts; or
 - (c) for any loss on disposal of any Collateral; or
 - (d) for any loss or accident occurring in the course of carrying on the business of the Debtor; or
 - (e) for any other negligence, default or omission;
- for which a mortgagee in possession might be liable.
- 14.7 **Validity of notices:** The Debtor will not have any claim against any Receiver in respect of the invalidity of any notice or demand, any error or omission in any notice or demand or any act or omission by any Receiver based on an invalid or incorrect notice or demand.
- 14.8 **Removal and replacement of Receiver:** The Creditor may at any time remove a Receiver and, if the Creditor thinks fit, appoint another person in his or her place.

15 PROTECTION OF THIRD PARTIES

- 15.1 No person dealing with the Creditor or any Receiver or Receiver's agent need enquire:
- (a) whether the security granted to the Creditor has become enforceable;
 - (b) whether any power which the Creditor, the Receiver or the Receiver's agent is purporting to exercise has become exercisable;
 - (c) whether the Creditor, the Receiver or Receiver's agent has the power which it is purporting to exercise;
 - (d) whether any Secured Money remains due or unpaid;
 - (e) how any money paid to the Creditor, any Receiver or Receiver's agent is applied.

16 PROCEEDS OF REALISATION

- 16.1 **Application:** Any net profits of carrying on the business of the Debtor and the net proceeds of any disposal of the Collateral will be applied by the Receiver (subject to the claims of any person ranking in priority to the Creditor):
- (a) first, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him or her of all or any of his or her powers (including the reasonable remuneration of the Receiver);

- (b) second, in payment of all preferential payments which are by law given priority over the charge of the Creditor;
 - (c) third, in payment of the Secured Money to the Creditor; and
 - (d) fourth, in payment of any residue to the Debtor or any other person who is entitled to it.
- 16.2 **GST:** If any disposal of any Collateral by the Creditor or any Receiver is taxable under the Goods and Services Tax Act 1985 the Debtor will on demand:
- (a) pay or refund to the Creditor the amount of the tax payable when it is due for payment; and
 - (b) provide to the Creditor any GST tax invoice statement pursuant to Section 5 of the Goods and Services Tax Act 1985 or any other information the Creditor requires in relation to the Goods and Services Tax Act 1985.

17 INSURANCE PROCEEDS

- 17.1 **Receipt:** The Creditor is entitled to receive all moneys payable to the Debtor in respect of any Collateral under any insurance or payable to the Debtor by any other person because of damage to or loss of the Collateral. The Creditor's receipt will be a complete discharge to the insurer or any other person for the moneys payable.
- 17.2 **Application:** The Creditor may either use the insurance or other moneys to make good any loss or damage to the Collateral or apply it towards repayment of the Secured Money.

18 COSTS AND ACCOUNTS

- 18.1 **Company to pay costs:** The Debtor will pay all costs and expenses incurred by the Creditor in connection with:
- (a) this Deed, any Collateral Security or any other Agreement;
 - (b) the exercise or attempted exercise by the Creditor of any of its powers or rights under this Deed, any Collateral Security or any other Agreement; and
 - (c) any default by any Covenantor,
- and all such costs and expenses shall be deemed to form part of the Secured Money.
- 18.2 **Debit account:** The Creditor may debit any account of the Debtor in the books of the Creditor with any Secured Money.
- 18.3 **Statements:** A statement signed by a Creditor's Representative will, in the absence of obvious error, be conclusive evidence against the Debtor of the amount of any Secured Money and of any other matter set out in the statement.

19 SET-OFF

- 19.1 **Right to set-off:** The Debtor irrevocably authorises the Creditor to at any time (and whether the Debtor is in receivership or liquidation) set off or combine any credit balance of the Debtor on any account at any branch of the Creditor against or with any Secured Money, notwithstanding any circumstances which would, but for this clause 19, prevent the Creditor from exercising any right of set off or combination of accounts.
- 19.2 **Contingent, unmaturing and unquantified indebtedness:** If at any time any indebtedness of the Debtor to the Creditor is contingent, unmaturing, or not quantified, the Creditor may withhold repayment of (and the payment of interest on) any credit balance owing to the Debtor until that indebtedness becomes due, matures, or becomes quantified,

or may set off the maximum liability which may at any time be owing to the Creditor by the Debtor.

- 19.3 **Special powers:** For the purposes of clause 19.1 and 19.2, the Creditor is authorised to break any term deposit to effect a set-off or combination.
- 19.4 **No obligation to set-off:** The Creditor is not obliged to exercise any of its rights under this clause 19.
- 19.5 **Contractual rights:** The Debtor acknowledges that the Creditor's rights under this clause 19 are contractual rights affecting and prevailing over the terms on which any credit balance is held and that the creation of those rights does not constitute the creation of any Security Interest in any credit balance.
- 19.6 **No prior notice needed:** Any power or right of the Creditor under this clause 19 may be exercised without prior notice or demand.

20 ASSIGNMENT

- 20.1 **Assignment by Debtor:** The Debtor may not assign or transfer any of its rights or obligations under this Deed, any Collateral Security or any agreement.
- 20.2 **Assignment by Creditor:** The Creditor may assign the Secured Money and its rights under this Deed, any Collateral Security or any agreement free from any right of set-off or equities between it and the Debtor.

21 CONTRACTING OUT AND WAIVER

- 21.1 **Contracting out:** The Debtor agrees that the following sections of the PPSA shall not apply: section 114(1)(a) (which relates to a debtor's right to receive notice of sale of collateral by secured party) and sections 133 and 134 (which relate to a debtor's rights to reinstate a security agreement after default).
- 21.2 **Waiver:** The Debtor waives any rights it may have under the following sections of the PPSA: section 116 (right to receive a statement of account), sections 120(2) and 121 (requirement that secured party give notice to the debtor if it proposes to take collateral in satisfaction of an obligation and a debtor's right to object), sections 125, 126, 127, 129 and 131 (relating to removal of an Accession). All of the foregoing sections of the PPSA are, to the fullest extent permitted by the law, contracted out of.
- 21.3 **Verification statements:** The Debtor waives its rights to receive a copy of any verification statement after the registration of a Financing Statement or financing change statement in respect of the Security Interest created by this Deed.

22 NOTIFICATION OF CHANGE OF NAME

- 22.1 **Notify the Creditor:** The Debtor undertakes not to change its name in any form without firstly notifying the Creditor of its intention and the relevant details associated with the change of name. This will enable the Creditor to amend its Financing Statement on the Register established under the PPSA in order to maintain its Security Interest and the corresponding priority that it holds under the PPSA.

23 GENERAL

- 23.1 **Governing law:** This Deed is to be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.
- 23.2 **Amendments, waivers and consents:** Any provision of this Deed may be amended only if the Creditor and the Debtor agree in writing. Any Event of Default may be waived before or after it occurs only if the Creditor so agrees in writing. Any waiver or consent is

effective only in the instance and for the purpose for which it is given. Any consent given by the Creditor may be given on any condition that the Creditor thinks fit.

- 23.3 **No waiver:** No failure or delay by the Creditor to exercise any power, remedy or right in relation to this Deed will:
- (a) prejudice, limit or affect or operate as a waiver of that power, remedy or right; or
 - (b) be deemed to waive any default or breach of any obligations, liability or agreement by any other party.

The exercise or partial exercise of any power, remedy or right will be without prejudice to that party's right to exercise that or any other power, remedy or right at the same time or in the future. A right granted or reserved may be exercised from time to time and at all times.

- 23.4 **Survival of covenants:** The covenants of the Debtor contained in this Deed will survive the final discharge of this Deed and will only be discharged when the Creditor is satisfied that the Debtor or other person repaying any Secured Money was solvent at the time of making payment or after the period during which the payment may be avoided.
- 23.5 **Partial invalidity:** If any provision of this Deed is or becomes or is held to be or to have become illegal, invalid, unenforceable, void or voidable for any reason, it will not affect the legality, validity or enforceability of the other provisions of this Deed, and will be severed from this Deed so that the remaining provisions remain in full force and effect and will be valid and enforceable to the fullest extent permitted by law.
- 23.6 **Powers, remedies and rights cumulative:** The powers, remedies and rights conferred on the parties by this Deed are cumulative and in addition to any powers, remedies or rights they have at law.

24 CONFLICT


- 24.1 **Discretion:** In the event that there is any conflict between the terms of this Deed and the terms of any other document entered into between the Debtor and Creditor, the Creditor shall have an absolute discretion as to which prevails.

25 PRIORITY

- 25.1 **Priority – Personal Property:** Any Security Interest created by this Deed in Personal Property has the same priority in respect of all Secured Money, including future advances.

EXECUTION

SIGNED for and on behalf of
MAGSONS HARDWARE LIMITED

by its director in
the presence of:


)
)
)
)



Director

Vinod Kumar

Director

Bharat Parshotam
Barrister & Solicitor
Auckland

SCHEDULE 1

Motor Vehicles						
Make or name of manufacturer	Model	Year of manufacture	Registration number (if any)	Vehicle identification number (if any)	Chassis number (if any) (required only if the vehicle has no vehicle identification number)	Colour(s)

Aircraft							
Make or name of manufacturer	Model	Year of manufacture	Class of aircraft	Registration mark*	Nationality mark*	Serial number*	Colour(s)

** The marks and serial number of aircraft must be the same as in the certificate of registration issued by the Director of Civil Aviation.*