



Registration of a Charge

Company name: **C & C 23 LIMITED**

Company number: **SC502206**

Received for Electronic Filing: **02/04/2015**



X44G8Q74

Details of Charge

Date of creation: **02/04/2015**

Charge code: **SC50 2206 0001**

Persons entitled: **THE TRUSTEES OF THE C R SMITH DIRECTORS PENSION SCHEME**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **ALISON MARSHALL, SOLICITOR, FOR CCW BUSINESS LAWYERS LTD**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 502206

Charge code: SC50 2206 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 2nd April 2015 and created by C & C 23 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd April 2015 .

Given at Companies House, Edinburgh on 7th April 2015

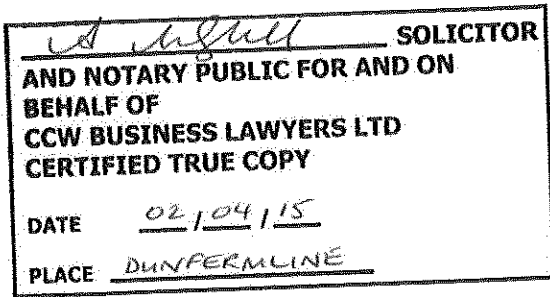
The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**



BOND AND FLOATING CHARGE

by

C & C 23 LIMITED

in favour of

THE TRUSTEES OF C R SMITH DIRECTORS PENSION SCHEME

of all its property and undertaking

Dated: *2 April 2015*

VIALEX[®]
27 Stafford Street
Edinburgh
EH3 7BJ
www.vialex.co.uk

BOND AND FLOATING CHARGE

by:

C & C 23 LIMITED (registered number SC502206), incorporated under the Companies Acts, whose registered office is at Gardeners Street, Dunfermline KY12 0RN (the "Chargor"),

in favour of:

BARNETT WADDINGHAM TRUSTEES (1980) LIMITED, GERARD JAMES PATRICK EADIE, RHONA LESLIE EADIE, HUGH COLUM EADIE and GEORGE ROGER EADIE as trustees of the **C R SMITH DIRECTORS PENSION SCHEME**, established under the trust deed dated 21 July 2010 (the "Chargee").

NOW IT IS HEREBY PROVIDED AND DECLARED THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Charge, unless expressly stated to the contrary or the context otherwise requires, the following words and expressions shall have the following meanings:

"Book Debts" means all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them.

Business Day means any day which is not a Saturday, a Sunday or a bank or public holiday in Scotland;

Charge means this first ranking bond and floating charge;

Charged Assets means the whole of the property which is or may be from time to time while this Charge is in force comprised in the property and undertaking of the Chargor;

Default Rate means 2% above the prevailing rate of interest applicable under the Facility Agreement from time to time;

Encumbrance means any standard security, assignation in security, floating charge, pledge, lien, hypothecation, encumbrance, title retention or any other agreement or arrangement having the effect of conferring a security interest (whether fixed or floating);

Event of Default is as defined in clause 8 of the Facility Agreement;

Facility Agreement means the agreement in relation to the term loan of £3,200,000 between C R Smith Glaziers (Dunfermline) Limited and the Chargee on or around the date hereof and as subsequently amended, varied or substituted from time to time;

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);

Guarantee means the intercompany guarantee guaranteeing the obligations of C R Smith Glaziers (Dunfermline) Limited under the Facility Agreement to be entered into by the Chargor and Cairnsmill Limited on or around the date hereof;

Receiver means a receiver and manager or other receiver appointed in respect of the Charged Assets and shall, if allowed by law, include an administrative receiver;

Secured Liabilities means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Chargee by C R Smith Glaziers (Dunfermline) Limited under the Facility Agreement and/or to the Chargee by the Chargor under the Guarantee;

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

Security Period means the period beginning on the date hereof and ending on the date upon which all the Secured Liabilities (actual or contingent) which have arisen or which may arise have been irrevocably paid and discharged or the floating charge hereby created has been finally released and discharged;

1.2 INTERPRETATION

In this Charge, except where the context otherwise requires:

- 1.2.1 all references to Clauses are references to Clauses of this Charge;
- 1.2.2 words signifying the masculine include the feminine and words signifying the neuter include the masculine and the feminine, and words importing the singular include the plural and vice versa;
- 1.2.3 any reference to any statutory provision or enactment of any kind having the force of law includes a reference to that provision as from time to time amended, extended or re-enacted;
- 1.2.4 all references to agreements, documents, or other instruments include a reference to the same as amended or supplemented or restated from time to time by all the parties;
- 1.2.5 all references to the Chargor and the Chargee include a reference to their successors and permitted assignees;
- 1.2.6 any undertaking by the parties not to do any act or thing shall, so far as it is within the power of that party, be deemed to include an undertaking to use reasonable endeavours (taking into account the extent of any control or influence it may have) not to allow or permit the doing of that thing;
- 1.2.7 any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing; and

1.2.8 the headings to the Clauses are inserted for convenience only and do not affect the interpretation of this Charge; and

1.2.9 where the words "include(s)" or "including" are used they are illustrative and shall not limit the scope of the words preceding them.

2. BOND

The Chargor undertakes to the Chargee that it will pay or discharge to the Chargee or as it may direct the Secured Liabilities when the same are due and payable.

3. FLOATING CHARGE

3.1 The Chargor, being a company incorporated in Scotland, as security for the payment and discharge of all the Secured Liabilities HEREBY GRANTS in favour of the Chargee a floating charge over the whole of the Charged Assets.

3.2 The floating charge granted by the Chargor pursuant to Clause 3.1 is a qualifying floating charge as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986.

3.3 The Chargor undertakes to the Chargee that it shall not create or permit to subsist any Encumbrance ranking in priority to or equally with or postponed to the Encumbrance created by this Charge.

3.4 The floating charge created by this Charge shall, subject to Section 464(2) of the Companies Act 1985, rank in priority to any fixed security which shall be created by the Chargor after its execution of this Charge, other than a fixed security in favour of the Chargee, and to any other floating charge which shall be created by the Chargor after its execution of this Charge 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.

3.5 Except with the prior written consent of the Chargee the Chargor shall not sell, transfer, lease, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Charged Assets, unless such action is undertaken in the ordinary course of business.

4. UNDERTAKINGS

4.1 The Chargor hereby undertakes with the Chargee, for the duration of the Security Period, in accordance with the following provisions.

4.2 The Chargor will carry on and conduct its business and affairs in a proper and efficient manner.

4.3 If the Chargor at any time defaults in keeping its Charged Assets in good and sufficient state of repair and in good working order or in effecting or keeping up any Insurances or in producing to the Chargee any such policy or receipt, the Chargee may, but shall not be obliged to, repair and maintain the same with power to enter into the Chargor's premises for that purpose or as the case may require to effect or renew any such insurance as aforesaid as the Chargee shall think fit and any sum or sums so expended by the Chargee shall be repayable by the Chargor to the Chargee on demand together with interest at the Default Rate from the date of payment by the Chargee as aforesaid.

- 4.4 All money which may at any time be received or receivable under any Insurances against such risks as aforesaid shall be declared to be held in trust for the Chargee unless applied in replacing, restoring or reinstating the property destroyed or damaged.
- 4.5 The Chargor will observe and perform in all material respects restrictive and other covenants and stipulations and burdens for the time being affecting its heritable, freehold or leasehold property or the mode of use or the enjoyment of the same or affecting its moveable or personal property or its ancillary or connected rights and will not without the prior consent in writing of the Chargee enter into any onerous or restrictive obligations with regard thereto and the Chargor will not do or suffer or omit to be done any act, matter or thing whereby any provisions of any act of Parliament, order or regulation whatever from time to time in force affecting such property or rights shall be infringed.
- 4.6 The Chargor will notify the Chargee immediately in the event of any creditor exercising diligence against it or any of the Charged Assets or taking any steps which might be expected to lead thereto.
- 4.7 The Chargor will, if the Chargee so requires, deposit with the Chargee all certificates, deeds and other documents of title or evidence of ownership in relation to all or any of the Charged Assets.
- 4.8 The Company shall, if called on to do so by the Chargee, execute an assignment of the Book Debts to the Chargee (or such nominee as it may appoint) on such terms as the Chargee may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

5. ENFORCEMENT

- 5.1 This Charge shall become enforceable upon and at any time after the occurrence of an Event of Default which is continuing unwaived.
- 5.2 To the extent that Charged Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement created by or pursuant to this Charge, the Chargee shall have the right, at any time after this Charge becomes enforceable, to appropriate all or any part of those Charged Assets in or towards the payment or discharge of the Secured Liabilities. The value of any Charged Assets appropriated in accordance with this clause 5.2 shall be the price of those Charged Assets at the time the right of appropriation is exercised determined by the Chargee by reference to a public index or by such other methods as the Chargee may select (including independent valuation). In each case the parties agree that the methods of valuation provided for in this Clause 5.2 are commercially reasonable for the purposes of the Financial Collateral Regulations. To the extent that Charged Assets constitute Financial Collateral, the Chargor agrees that such Charged Assets shall be held or designated so as to be under the control of the Chargee for all purposes of the Financial Collateral Regulations.
- 5.3 Notwithstanding any other provision of this Charge, the Chargee may, after enforcement of this Charge in accordance with this Clause 5, elect to receive any of the Charged Assets in the form of such assets or to receive the cash equivalent value of such assets following sale of the assets.

6. APPOINTMENT OF RECEIVER OR ADMINISTRATOR

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

6.1.1 a Receiver of all or any of the Charged Assets; and/or

6.1.2 an administrator of the Chargor,

in each case in accordance with and to the extent permitted by applicable laws. The Chargee may not appoint a Receiver solely as a result of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under Schedule A1 of the Insolvency Act 2000 except with the leave of the court.

6.2 The power to appoint a Receiver or administrator of the Charged Assets shall be immediately exercisable in relation to the security created by the Chargor by or pursuant to this Charge, and the Chargee 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 a Receiver or administrator of the Charged Assets.

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

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

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

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

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

6.7.1 to promote the formation of any new limited liability partnership, company or corporation;

6.7.2 to become a member of, subscribe for or acquire for cash or otherwise any interest in or share capital of such new limited liability partnership, company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;

6.7.3 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Charged Assets or any part thereof to any such new limited liability partnership, company or corporation and accept as consideration or part of the consideration therefore in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it any membership rights, shares or further shares in any such limited liability partnership, 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;

- 6.7.4 to make any arrangement or compromise which the Chargee or the Receiver may think fit;
 - 6.7.5 to sever any fixtures (including trade and tenants fixtures) from the property of which they form part;
 - 6.7.6 to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Assets including, without limitation, all voting and other rights attaching to stocks, shares and other securities owned by the Chargor;
 - 6.7.7 to convene a meeting of the Members of the Chargor;
 - 6.7.8 to acquire any property on behalf of the Chargor;
 - 6.7.9 to exercise all powers conferred by the Insolvency Act 1986 on receivers appointed in England and Wales in respect of any of the Charged Assets located in England and Wales;
 - 6.7.10 to do all other acts and things as he may consider necessary or desirable for protecting or realising the Charged Assets or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Charge, and exercise in relation to the Charged 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 Chargor for all and any of the purposes aforesaid.
- 6.8 No purchaser, security grantee or other person dealing with a Receiver shall be concerned whether the Secured Liabilities have become payable or enforceable or whether any money remains outstanding under this Charge or shall be concerned with any application of any money paid to the Receiver.

7. APPLICATION OF ENFORCEMENT MONIES

- 7.1 All monies received by the Chargee or any Receiver shall be applied by them in whatever order the Chargee thinks fit.
- 7.2 Nothing contained in this Charge shall limit the right of the Receiver or the Chargee (and the Chargor acknowledges that the Receiver and the Chargee are so entitled) if and for so long as the Receiver or the Chargee, in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant hereto into a suspense account, without any obligation to apply the same or any part thereof in or toward the discharge of any Secured Liability.

8. RELEASE AND DISCHARGE

- 8.1 The Chargee may at any time release the Chargor from any or all of its obligations under or pursuant to this Charge and/or all or any part of the Charged Assets from the security created by this Charge upon such terms as the Chargee may think fit but nothing in this Charge does, shall constitute or is intended to constitute a release of any of the Charged Assets.

- 8.2 Upon irrevocable payment or discharge in full of the Secured Liabilities, the Chargee shall at the Chargor's request and cost release to the Chargor (or as it may direct) the Charged Assets from the floating charge hereby created.

9. PROTECTION OF SECURITY

- 9.1 The security created by this Charge shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever, and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of party only of the Secured Liabilities, and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.

- 9.2 The security created by this Charge shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Chargee may now or at any time hereafter hold for all or any part of the Secured Liabilities.

- 9.3 No failure on the part of the Chargee or any Lender to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Charge 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 Charge and any such other document are cumulative and not exclusive of any right or remedies provided by law.

- 9.4 Each of the provisions in this Charge 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 hereof shall not in any way be affected or impaired thereby.

10. FURTHER ASSURANCE

The Chargor shall execute and do all such assurances, acts and things as the Chargee may require for perfecting or protecting the security created by or pursuant to this Charge over the Charged Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Chargee or in any Receiver and shall, in particular, execute all fixed securities, floating charges, assignments, securities, transfers, dispositions and assurances of the Charged Assets whether to the Chargee or to its nominee(s) or otherwise and give all notices, orders and directions which the Chargee may think expedient.

11. POWER OF ATTORNEY

- 11.1 The Chargor, subject to Clause 11.2, hereby irrevocably appoints the Chargee and any Receiver to be its attorney for it and on its behalf and in its name or otherwise and as its act or deed to create or constitute, or to make any alteration or addition or deletion in or to, any documents which the Chargee or Receiver may require for perfecting or protecting the title of the Chargee or Receiver to the Charged Assets or for vesting any of the Charged Assets in the Chargee or Receiver or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and otherwise perfect any fixed security, floating charge, transfer, disposition, assignment, security and/or assurance or any writing, assurance, document or act which may be required or may be deemed proper by the Chargee

or Receiver on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by the Chargee or Receiver of all or any of the Charged Assets.

11.2 Such appointments shall take effect immediately, but the powers conferred thereby shall only become exercisable upon the occurrence of an Event of Default.

11.3 The Chargor 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 11.

12. EXPENSES

12.1 The Chargor binds and obliges itself for the whole expenses of completing and enforcing the security hereby granted and the expenses of any discharge hereof.

12.2 All costs, charges and expenses incurred and all payments made by the Chargee or any Receiver hereunder in the lawful exercise of the powers hereby conferred whether or not occasioned by any act, neglect or default of the Chargor shall carry interest from the date of the same being incurred or becoming payable at the Default Rate. The amount of all such costs, charges, expenses and payments and all interest thereon and all remuneration payable hereunder shall be payable by the Chargor on demand and shall be a Secured Liability. All such costs, charges, expenses and payments shall be paid and charged as between the Chargee or any Receiver and the Chargor on the basis of a full and unqualified indemnity.

13. INDEMNITY

The Chargee, every Receiver and every attorney, manager, agent or other person appointed by the Chargee or any such Receiver in connection herewith shall be entitled to be indemnified out of the Charged Assets in respect of all liabilities and expenses properly incurred by them or him in the execution or purported execution of any of the powers, authorities or discretions vested in them or him pursuant hereto and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in anywise relating to the Charged Assets, and the Chargee and any Receiver may retain and pay all sums in respect of the same out of any monies received under the powers hereby conferred.

14. AVOIDANCE OF PAYMENTS

Any amount which has been paid by the Chargor to the Chargee and which is, in the opinion of the Chargee, capable of being reduced or restored or otherwise avoided in whole or in part in the liquidation or administration of the Chargor, shall not be regarded as having been irrevocably paid for the purposes of this Charge.

15. NOTICES

Any document, notice, notification, statement, application for consent or any other thing required to be given or served in terms of this Charge may be given or served personally, or by sending the same by first class recorded delivery post at or to:

15.1 in the case of the Chargee, Gardeners Street, Dunfermline KY12 0RN; or

15.2 in the case of the Chargor, (for the attention of Barnett Waddingham Trustees (1980) Limited), Decimal Place, Chiltern Avenue, Amersham HP6 5FG);

or in each case, at or to such other address as shall have been notified to the either the Chargor or the Chargee as applicable for that purpose.

Any document, notice, statement or other thing given or served by post in accordance with Clause 15.1 shall be deemed to have been duly given or served on the second Business Day after the letter containing the same was posted, and in proving that any document, notice, statement or other thing was so given or served, it shall be necessary only to prove that the same was properly addressed and posted in accordance with the provisions of the foregoing paragraph.

16. CERTIFICATE AND CONSENT TO REGISTRATION


- 16.1 A certificate signed by a duly authorised officer of the Chargee as to the amount of the Secured Liabilities or any part of them shall, in the absence of manifest error, be conclusive and binding on the Chargor.
- 16.2 The Chargor consents to the registration of this Charge and of the certificate referred to in Clause 16.1 above for preservation and execution.

17. LAW AND JURISDICTION

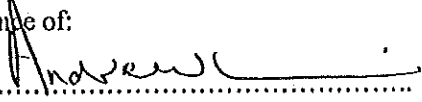
This Charge shall be governed by and construed in accordance with the laws of Scotland, and the parties submit to the irrevocable and exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF this Charge consisting of this and the preceding 9 pages, is executed as follows:

Signed by a director, for and on behalf of C&C 23 Limited by


.....
..... HUBBIE RABIE Full Name

at *Leinfurline*
on the 2 day of April 2015.

in the presence of:
Witness..... 
Name..... ANDREW ADIE
Address..... 12 MARLEPARK AVE
..... KATYRN