

Stuart & Sons Limited	117548 (England & Wales)
Statum Limited	343652 (England & Wales)
Royal Doulton plc	452813 (England & Wales)
Royal Doulton (UK) Limited	58357 (England & Wales)
Royal Doulton Overseas Holdings Ltd	245254 (England & Wales)
Swinnertons Limited	115424 (England & Wales)
<b>USA</b>	
Waterford Wedgwood USA, Inc.	131943058 (New York)
Waterford Wedgwood Holdings, Inc.	2181382 (USA)
Waterford Wedgwood, Inc.	2646093 (Delaware)
WW Inc.	2234381 (Delaware)
Waterford Wedgwood Finance, Inc.	2942041 (Delaware)
Waterford Wedgwood Linens, Inc.	3404635 (Delaware)
Royal Doulton USA Inc.	0398428 (Delaware)
<b>Ireland</b>	
Waterford Wedgwood plc	11861 (Ireland)
Waterford Crystal (Manufacturing) Limited	104597 (Ireland)
Waterford Crystal Limited	78088 (Ireland)
Cash's Mail Order Limited	314484 (Ireland)
<b>Germany</b>	
Waterford Wedgwood GmbH	HR B 2900 (Amtsgericht at Hof) Germany
<b>Australia</b>	
Josiah Wedgwood & Sons (Aust) Pty Ltd	ACN 000077190 (Australia)
Royal Doulton Australia Pty Ltd	ABN 59 000 078 562
<b>Japan</b>	
Waterford Wedgwood Japan Limited	(Japan)
Royal Doulton Japan KK	(Japan)
<b>Canada</b>	
Waterford Wedgwood Canada Inc.	228205-04 (Canada)

Royal Doulton Canada Limited	808949 (Ontario, Canada)
<b>Indonesia</b>	
PT Doulton	TDP 30.03.1.26.02557 (Indonesia)

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**Part I**  
**General**

(A) **Corporate Documents**

- 1 A certified copy of the constitutional documents of each Original Obligor.
- 2 A certified copy of a resolution of the board of directors (or equivalent) of each Original Obligor approving the execution of the Finance Documents to which it is a Party and the taking of any action required or permitted pursuant thereto.
- 3 A specimen of the signature of each person authorised to give notices on behalf of each Obligor.
- 4 A certificate of each Obligor (signed by a director) confirming that the execution and performance of this Agreement does not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.
- 5 Satisfactory company and/or other searches.
- 6 Such legal opinions as the Agent or the Original Senior Tranche B Lender may require to confirm the validity and enforceability of the Finance Documents and the arrangements relating to the Cash Deposit, including, without limitation:
  - (a) opinions from its advisers and/or Obligors' advisers in England, the USA, Canada, Germany, Ireland, Japan, Australia, Switzerland, Indonesia and the Cayman Islands; and
  - (b) an opinion from Clifford Chance LLP addressed to the Lenders, in form and substance satisfactory to the Lenders, confirming that, as at the date of such opinion, the execution, delivery and performance of the Finance Documents, does not result in a breach of the terms and provisions of, or constitute a default under, the High Yield Bonds or the High Yield Bond Indenture.

(B) **Security And Other Documents**

- 7 The Fee Letter, and the Senior Tranche B Fee Letter, duly executed on behalf of the Company and payment in each case of all amounts payable thereunder on or before the date hereof to the extent they are required to be paid on or prior to the date hereof.
- 8 The Finance Documents, duly executed by the parties thereto together with such further documents as the Agent or the Original Senior Tranche B Lender may require in connection with the completion, registration, perfection or enforceability thereof or of any security intended to be created thereby or, to the extent to which they are not then available, the Agent and the Original Senior Tranche B Lender being reasonably satisfied that they will be delivered to it in compliance with Clause 29.38 (*Conditions Precedent*), including in relation to the Cash Deposit and the entry by Glandore Limited into arrangements with the Agent in relation thereto satisfactory to the Agent and the Original Senior Tranche B Lender.

- 9 Certified copies of (i) all notices of assignment and other notices required to be given pursuant to the Security Documents and (ii) all acknowledgements required to be given with respect thereto, duly executed by the recipient or, to the extent that they are not then available, the Agent and the Original Senior Tranche B Lender being reasonably satisfied that they will be delivered to it in compliance with Clause 29.38 (*Conditions Precedent*).
- 10 The Intercreditor Agreement duly executed by the parties thereto.
- 11 Evidence as to the insurances maintained by each Obligor and their conformity to the terms of the Finance Documents (including certificates of insurance evidencing each Obligor's property and liability insurance and confirming that the Security Trustee will be noted as sole loss payee promptly after the first Utilisation) and, in relation to any real property located in the USA and owned by any Obligor, receipt by the Agent of title commitments and title certificates therefor in amounts, forms and issued by carriers satisfactory to the Agent and the Original Senior Tranche B Lender.
- 12 All title documents to the Mortgaged Property (or acceptable solicitors undertakings in lieu thereof), together with reports on title (or equivalent in the relevant jurisdiction) in form and substance acceptable to the Agent and the Original Senior Tranche B Lender.
- 13 A brand appraisal, report and valuation of the trade marks and intellectual property rights of the Company and its Subsidiaries in terms satisfactory to the Agent and the Original Senior Tranche B Lender, evidencing a net orderly liquidation value for such intellectual property of not less than US\$100,000,000 (with at least US\$75,000,000 of such liquidation value attributable to trademarks directly owned by the Company and the Guarantors).
- 14 Environmental Report.
- 15 Such certificates of registration, application forms and other documents (together with appropriate fees) as may be necessary to complete and register the security created pursuant to the Security Documents or, to the extent that they are not then available, the Agent and the Original Tranche B Lender being reasonably satisfied that they will be delivered to it in compliance with Clause 29.38 (*Conditions Precedent*).
- 16 Share certificates (together with executed, blank transfer forms) in respect of all shares and other securities charged to the Security Trustee pursuant to the Security Documents.
- 17 Evidence that the Blocked Accounts have been opened, together with copies of the completed mandates and requisite documentation reflecting the Agent's or the Security Trustee's control thereof.
- 18 Details of the amounts standing to the credit of each account which is to be a Charged Account on the day before the date of this Agreement.
- 19 Evidence that the Existing Group Indebtedness will be repaid in full out of the proceeds of the initial Utilisation and that all security subsisting with respect thereto will be discharged.
- 20 A subordination agreement, amended on terms satisfactory to the Agent and the Original Senior Tranche B Lender, with respect to and subordinating the Rosenthal Subordinated Facility and the WW Subordinated Facility and otherwise on terms acceptable to the Agent and the Original Senior Tranche B Lender.

- 21 Evidence that the assets and undertakings of each Obligor are free of any Security Interest other than (i) such Security Interests as are permitted to subsist pursuant to this Agreement and (ii) such Security Interests as will be fully discharged following repayment of the Existing Group Indebtedness. In addition, lenders in respect of the Existing Group Indebtedness shall have executed and delivered a general release and a pay off letter in form and substance satisfactory to the Agent and the Original Tranche B Lender.
- 22 The Intra-Group Security Documents, duly executed by the parties thereto together with such further documents as the Agent or the Original Senior Tranche B Lender may require in connection with the completion, registration, perfection or enforceability thereof or of any security intended to be created thereby (or, to the extent to which they are not then available, the Agent and the Original Tranche B Lender being reasonably satisfied that they will be delivered to it in compliance with Clause 29.38 (*Conditions Precedent*)).
- 23 Certified copies of the dated and executed loan agreements (as amended on terms satisfactory to the Agent and the Original Senior Tranche B Lender) secured by the Intra-Group Security Documents (including the Rosenthal Intra-Group Facilities) on terms satisfactory to the Agent and the Original Senior Tranche B Lender.
- 24 A duly completed Receivables Notice and Stock Notice from each Borrower.
- (C) **Other Evidence**
- 25 The Agent and the Original Senior Tranche B Lender are satisfied that: (a) there has been no material adverse change in the business, assets, operations or financial condition of Company and its Subsidiaries taken as a whole since 31 March 2005 other than as disclosed in the management accounts of the Company and its Subsidiaries as of and through 31 August 2005, delivered to the Agent or the Original Senior Tranche B Lender on or before the date hereof; and (b) the consolidated EBITDA of the Company and its Subsidiaries for October 2005 was not less than €1,300,000.
- 26 The Agent and the Original Senior Tranche B Lender are satisfied that as at the date hereof no action, suit, investigation or proceeding is pending or, to the knowledge of the Company, has been threatened in any court or before any arbitrator or governmental authority, in any case, which could reasonably be expected to have a material adverse effect on (a) the business, assets, operations or financial condition of the Company and its Subsidiaries, taken as a whole; (b) the ability of any Borrower or any Guarantor to perform its obligations under the Finance Documents; or (c) the rights and remedies of the Lenders under the Finance Documents.
- 27 The Agent shall have received, each in form and substance satisfactory to the Agent and the Original Senior Tranche B Lender, (a) a pro forma balance sheet of the Company dated as of the date hereof which pro forma balance sheet shall reflect no material changes from the most recent balance sheet of the Company delivered to the Agent dated as of 31 October 2005 and (b) management accounts for the Company dated as of 31 October 2005.
- 28 The Agent and the Original Senior Tranche B Lender are satisfied that the Company and each Subsidiary is adequately capitalised, that the fair saleable value of the Company's and each Subsidiary's assets will exceed its liabilities as at the date hereof, and that the Company and each Subsidiary will have sufficient working capital to pay its debts as they fall due. The Agent shall have received certification as to the financial condition and solvency of each Borrower and each Guarantor (after giving effect to the transactions contemplated hereby and the incurrence of

Financial Indebtedness related thereto and taking into account the resources available to each Borrower and each Guarantor), from the chief financial officer (or director responsible for finance) of each Borrower and for the Guarantors from the chief financial officer of the Group.

- 29 The Company shall have obtained all governmental, shareholder and third party consents and approvals necessary or, with respect to third party consents and approvals, reasonably desirable (in the opinion of the Agent and the Original Senior Tranche B Lender) in connection with this Agreement and the Security Documents and the transactions contemplated hereby, including without limitation the consent of Wedgwood Museum Trust in respect of the Security Trustee's Security Interest at the Barlaston property.
- 30 The Agent and the Original Senior Tranche B Lender shall have completed to their satisfaction: (a) legal due diligence pertaining to any pension deficit in any pension scheme maintained and/or operated by the Company or any of its Subsidiaries; and (b) legal and financial due diligence as to the solvency of the Company and each of its Subsidiaries (including as it relates to the German Obligors), and are satisfied with all and any steps taken to address any issues raised by the Agent or the Original Senior Tranche B Lender in relation thereto.
- 31 The Agent's completion of enquiries to its satisfaction with up to three key suppliers and three key customers of the Company and its satisfaction with the status of the relationships of the Company and its Subsidiaries with such suppliers and customers.
- 32 The Agent is satisfied that the Company has engaged, on terms reasonably acceptable to the Agent, a third party financial, debt advisory and restructuring consultant reasonably acceptable to the Agent to assist and consult with Frank Johnston in regard to restructuring matters relating to the Group.
- 33 The Agent is satisfied, in the case of first Utilisation under the Senior Facility, that the Senior Tranche B Facility is drawn down in full.
- 34 The Original Senior Tranche B Lender is satisfied, in the case of utilisation of the Senior Tranche B Facility, that the Senior Facility are available for utilisation.
- 35 The Agent and Original Senior Tranche B Lender shall be satisfied with the arrangements relating to the making of the Cash Deposit by Glandore Limited and the terms upon which the Cash Deposit is maintained by Glandore Limited with the Agent or the Security Trustee, and that such Cash Deposit has been made and such arrangements (including a Security Interest in respect thereof) have been established.

**(D) Availability Limit Information**

- 36 Such information as the Agent may require in order to determine, as at the date of this Agreement, (i) the amount of the Eligible Receivables, (ii) the Net Stock Value, (iii) the Availability Limits pursuant to Clause 6 (*Restrictions applicable to individual Facilities*) and (iv) the Reserves.
- 37 Such information as the Agent may require in order to identify or determine (i) those suppliers of Stock to the Obligors which supply on title retention terms, (ii) those customers of the Obligors which acquire Stock on sale or return terms, (iii) which Stock is supplied by any Obligor otherwise than as principal (whether as a consignee or otherwise) and (iv) the nature of the payment terms which apply as between the Obligors and their customers.

- 38 Evidence that the amount of the Senior Facility available for utilisation will be not less than €50,000,000 after (i) the payment of fees and expenses incurred in connection with the Facilities, (ii) deductions for past due creditors and other obligations, and (iii) the application of the proceeds of the Senior Tranche B Loan and the initial Utilisation in respect of the Senior Facility.

**Part II  
Security**

**(A) GENERAL FIXED AND FLOATING CHARGES**

General fixed and floating charges over all the assets (including charges over machinery, equipment, stock, receivables, bank accounts and shares in Subsidiaries) to be provided by the following Obligor:

**1 England & Wales**

- (a) Josiah Wedgwood & Sons Limited
- (b) Josiah Wedgwood & Sons (Exports) Limited
- (c) Waterford Wedgwood Retail Limited
- (d) Wedgwood Limited
- (e) Waterford Wedgwood UK PLC
- (f) Waterford Wedgwood Australia Limited
- (g) Stuart & Sons Limited
- (h) Statum Limited
- (i) Royal Doulton plc
- (j) Royal Doulton (UK) Limited
- (k) Royal Doulton Overseas Holdings Limited
- (l) Swinnertons Limited

The security shall include specific, first legal mortgages over (i) premises at Barlaston, Stoke-on-Trent ST12 9ES; (ii) Tuscan Works, Forrester Street, Longton, Stoke-on-Trent ST3 5XF; (iii) the land on the north west side of Leek New Road, Baddeley Green and (iv) the land and buildings on the west side of Victoria Road, Fenton.

The security shall also include a fixed and perfected charge over the following trade marks namely (i) Wedgwood, (ii) Coalport, (iii) Masons, (iv) Johnson Bros, (v) Franciscan, (vi) Doulton, (vii) Bunnykins, (viii) Doulton, (ix) Minton, (x) Royal Albert and such other trade marks that the Agent may require.

**2 Ireland**

- (a) Waterford Wedgwood plc
- (b) Waterford Crystal (Manufacturing) Limited
- (c) Waterford Crystal Limited
- (d) Cash's Mail Order Limited

The security shall include specific, first legal mortgages over (i) premises at Cork Road, Kilbarry Co. Waterford, (ii) premises at Shandon Road, Dungarvan, Co. Waterford and (iii) the Waterford Crystal Sport and Leisure Centre.

The security shall also include a fixed and perfected charge over the following trade marks namely (i) Waterford, (ii) Marquis, (iii) Stuart and such other trade marks that the Agent may require.

The security shall include a Swiss Law pledge over the Company's shareholding in Spring-Switzerland GmbH.

**3 Australia**

Royal Doulton Australia Pty Limited

**(B) CHARGES OVER STOCK, RECEIVABLES AND OTHER ASSETS**

Security over their machinery, equipment, stock, receivables (with security over receivables to be by way of a security assignment), bank accounts, shares in subsidiaries and all other assets to be provided by the following Obligor:

**1 Germany**

- (a) Rosenthal AG
- (b) Waterford Wedgwood GmbH

The security shall include specific, first ranking charges over (i) the premises and factory site at Philip - Rosenthal Platz 1, 95100 Selb, (ii) the factory at Geheimrat - Rosenthal - Strasse 71, 95100 Selb and (iii) the warehouse/factory premises at Zentrallager Speichersdorf, Dresdner Strasse 11, 95469 Speichersdorf.

The security shall also include a fixed and perfected charge over the following trade marks, namely (i) Rosenthal Studio Line, (ii) Rosenthal, (iii) Thomas Rosenthal Group and (iv) Hutschenreuther.

**2 Canada**

- (a) Waterford Wedgwood Canada Inc.
- (b) Royal Doulton Canada Limited

**3 USA**

- (a) Waterford Wedgwood USA Inc



- (b) Waterford Wedgwood Holdings, Inc.
- (c) Waterford Wedgwood Inc.
- (d) WW Inc.
- (e) Waterford Wedgwood Finance Inc.
- (f) Waterford Wedgwood Linens Inc.
- (g) Royal Doulton USA Inc
- (h) Rosenthal U.S.A. Limited

The security shall include (i) appropriate lock-box arrangements and (ii) appropriate access arrangements for warehouse/factory premises.

4 **Japan**

- (a) Waterford Wedgwood Japan Limited
- (b) Royal Doulton Japan KK

(C) **CHARGES OVER SHARES**

A charge by Josiah Wedgwood (Aust) Pty Ltd over its shareholding in Waterford Wedgwood Australia Limited.

A charge by Bleak Hill Limited over its shareholding in PT Doulton.

A charge by Abdissenhof B.V. over its shareholding in Royal Doulton Canada Limited.

A charge by Abdissenhof B.V. over its shareholding in Royal Doulton Australia Holdings Pty Limited.

A charge by Royal Doulton Australia Holdings Pty Limited over its shareholding in Royal Doulton Australia Pty Limited.

A charge by Royal Doulton Asia Pacific Limited over its shareholding in Royal Doulton Japan KK.

A charge by Waterford Wedgwood Partners over its shareholding in Waterford Wedgwood Inc.

(D) **INDONESIAN SECURITY**

Hak Tanggungan of real property by PT Doulton.

Deeds of Fiduciary Transfer of Immoveables, Stock and Inventory, Insurances and Receivables by PT Doulton.

**SCHEDULE 3**  
**REPORTING AND FINANCIAL UNDERTAKINGS; RELEASE OF CASH COLLATERAL; MARGIN**  
**ADJUSTMENT**

**(A) REPORTING UNDERTAKINGS**

**1 Immediate Reporting Requirements**

Each Borrower will furnish to the Agent full details of each of the following matters as soon as such Borrower becomes aware thereof:

- (a) (i) any material delay in such Obligor's performance of its obligations to an account debtor, (ii) any assertion by any account debtor of any right of set-off, defence, counterclaim or similar right with respect to any Receivable, (iii) any information coming to its attention which may be materially adverse to the financial condition of any account debtor and (iv) any information coming to its attention which might lead the Agent to consider any Receivables as no longer constituting Eligible Receivables;
- (b) any return of Stock by an account debtor where that Stock has a value in excess of €100,000;
- (c) any supplier who imposes retention of title clauses, other than any mentioned in a list provided for the purposes of Clause 27.15 (*Retention of Title*);
- (d) details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Obligor, and which might, if adversely determined, have a Material Adverse Effect;
- (e) any ERISA Event;
- (f) in relation to any pension scheme operated by or maintained for the benefit of members of the Group and/or any of its employees, (i) any member of the Group fails to ensure that such scheme is fully funded to the extent required by law or (ii) any contribution notice or claim issued to any person in relation to that pension scheme pursuant to the Pensions Act 2004 (or equivalent legislation or regulation in any other jurisdiction) or (iii) any member of the Group fails to pay any amount when due in respect of any such pension scheme of any member of the Group in Ireland, the United Kingdom or Germany under or pursuant to rules or regulations relating to any such pension scheme or (iv) a funding proposal or draft funding proposal under the Irish Pensions Acts 1990 to 2005 is prepared in relation to any pension scheme to which any Irish Obligor is required to contribute; and
- (g) any material change in accounting policies or financial practices by any Obligor.

**2 Weekly Reporting Requirements**

Each Borrower will furnish to the Agent on a weekly basis:

- (a) a duly completed Receivables Notice in accordance with Clause 7.1 (*Delivery of Notices*); and

- (b) schedules of Receivables, collections and credits and Receivables which are (or are alleged by the account debtor to be) subject to any restriction on assignment or charge.

### 3 Monthly Reporting Requirements

The Company will furnish to the Agent (in a format acceptable to the Agent):

- (a) On a monthly basis, a monthly stock report in the form from time to time required by the Agent in respect of each Borrower.
- (b) Within 15 days of the end of each month or at such other times and with respect to such other periods as the Agent may require, in respect of each Borrower, full details (in such form as the Agent may from time to time require) of (A) all ageings of payables and Receivables with dated invoices, (B) all Stock by category, location and supplier and (C) if so requested by the Agent, a sales ledger control account and reconciliation of its Blocked Accounts.
- (c) On a monthly basis, within 15 days of the end of each month, for each Borrower, a borrowing base certificate in form and substance satisfactory to the Agent.
- (d) With respect to each Borrower as soon as the same become available, but in any event within 30 days after the end of each monthly management accounting period (but in the case of those monthly management accounting periods comprising March or November, 45 days after the end thereof) (and in each case in a format acceptable to the Agent) full individual and consolidated accounts for that period, including Stock figures and valuations for that month, a breakdown of the value and identity of preferential creditors for that month and details of all input and output VAT.
- (e) (In the case of the Company only) together with the accounts referred to in (iv) above, a certificate from a Director of the Company confirming that (A) the Company was in compliance with the financial undertakings in paragraph (B) of this Schedule as at the date to which such accounts were made up (unless at such time the Company is not required to comply with such financial covenants pursuant to paragraph (B)2 of this Schedule) and (B) Utilisations under this Agreement have not breached or violated, or otherwise contravened, any provision of the High Yield Bonds or the High Yield Bond Indenture.
- (f) On a monthly basis, a monthly report in the form from time to time required by the Agent in respect of details of the intellectual property held by each Obligor.
- (g) For the purposes of this paragraph 3 and for the purpose of ascertaining any Review Period, "month" refers to an accounting month of the Company.
- (h) If the Total Availability in any 30 day period falls below €30,000,000 the Agent may, in its discretion, require that all or any of the reports described in this paragraph 3 are prepared and delivered to it on such more frequent bases as it determines in its discretion.
- (i) (In the case of the Company only) together with the accounts referred to in (d) above, a certificate of calculation from a Director of the Company showing (A) the ratio of Senior Debt to EBITDA and (B) the Minimum Trading Cashflow for that month,

notwithstanding that the Company may not at that time be required to comply with the financial covenants under paragraph (B)2 of this Schedule.

**4 Three Monthly Reporting Requirements**

Each Borrower shall furnish to the Agent (in a format acceptable to the Agent) as soon as the same become available, but in any event within 45 days after the end of each of its quarterly management accounting periods (and in each case in a format acceptable to the Agent) full individual and consolidated accounts for that period.

**5 Six Monthly Reporting Requirements**

The Company shall co-operate with the Agent and any third party appraiser appointed by the Agent in relation to the provision to the Agent by such third party appraiser of an inventory appraisal in a form and substance satisfactory to the Agent (acting reasonably) at each of the dates falling at six monthly intervals after the date of this Agreement.

**6 Annual Reporting Requirements**

- (a) The Company shall supply to the Agent:
  - (i) as soon as the same become available, but in any event within 120 days after the end of each of its financial years:
    - (A) its audited financial statements (consolidated where appropriate) for that financial year; and
    - (B) the audited financial statements of each Obligor for that financial year (to the extent to which they are prepared under local law and, if not, the management accounts for the corresponding period);
  - (ii) together with the accounts referred to in (i) above, a certificate from the auditors to the Company confirming that the calculations relating to the financial undertakings referred to in paragraph (B) below were accurately extracted from the relevant financial statements.
- (b) The Company shall co-operate with the Agent and any third party appraisers appointed by the Agent in relation to the provision to the Agent by such third party appraisers of:
  - (i) a Property Valuation; and
  - (ii) an Equipment Valuation,on each of the dates falling at 2 monthly intervals after the date of this Agreement.
- (c) The Company shall provide to the Agent each month, not later than 15 days after the end of that month, a certificate of its chief financial officer confirming that each Borrower is current in funding its pension schemes, stating the amount it was required by law to fund to its pension schemes in the month then ended.
- (d) The Company shall supply to the Agent as soon as the same become available, but in any event within 9 months after the end of the scheme year to which they relate, the

trustee annual reports prepared in accordance with the Irish Pensions Act 1990 to 2005 in respect of each pension scheme to which any Irish Obligor is required to contribute.

**7 On Request Reporting Requirements**

Each Obligor will furnish to the Agent (in a format acceptable to the Agent) upon the Agent's request to that effect:

- (a) an appraisal of its Stock addressed to the Agent and in a form and prepared by an appraiser acceptable to the Agent;
- (b) after the occurrence of an Event of Default and whilst it is continuing such information concerning the Credit Card Agreements and the Credit Card Receivables as the Agent may request; and
- (c) such further information regarding the financial condition, business, assets and operations of any Obligor as the Agent may reasonably request.

**8 Reporting Requirements on Issue**

Each Obligor will furnish to the Agent all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched.

**9 Provisions with respect to Stock, Receivables and Assets**

- (a) If, at any time, any Stock is returned to an Obligor by an account debtor or is reclaimed or repossessed, then:
  - (i) the related Receivable will cease to be an Eligible Receivable; and
  - (ii) if so reasonably requested by the Agent, the relevant Obligor shall (i) hold the returned Stock on trust for the Security Trustee as trustee on behalf of the Secured Beneficiaries (as defined in the Intercreditor Agreement), (ii) segregate the returned Stock from its other property, (iii) dispose of the returned Stock only in accordance with the Agent's instructions and (iv) not issue any credits, discounts or allowances with respect to the returned Stock without the Agent's prior written consent.
- (b) Each Obligor undertakes to maintain complete, accurate and up to date debtor records (including transport documents evidencing that goods have been despatched and payment is due), and to allow to the Agent access to those records on request.
- (c) Each Obligor acknowledges that the Agent may take such steps as it may deem appropriate to verify any asset of such Obligor (whether by direct enquiry with account debtors or otherwise howsoever).
- (d) Each Obligor will (on one Business Day's notice or, if an Event of Default is continuing immediately upon request) afford to the Agent or its nominee complete access to such Obligor's premises during normal business hours for the purpose of inspecting, verifying and auditing the books, records and assets of such Obligor.

Each Obligor will, on request, provide to the Agent or its nominee copies or extracts from such books or records as it may require.

- (e) The Agent may, at such times as it in its discretion determines, undertake field examinations or collateral examinations at the cost of the Obligors (which costs shall include the out-of-pocket expenses of any such examiners therefor and a €850 per day per field examiner charge) in relation to the assets of all or any of the Obligors, and the properties at which such assets are located, and the books and/or records of any of the Obligors relating to such assets or properties, and the Obligors shall (on one Business Day's notice or, if an Event of Default is continuing, upon request) afford to the Agent or its nominee complete access to such Obligor's premises during normal business hours for the purpose of conducting such field examinations or collateral examinations of such Obligor. Each Obligor will, on request, provide to the Agent or its nominee copies or extracts from such books or records relating to those assets or those properties as the Agent or its nominee may require. The frequency of such periodic inspections shall be at the Agent's discretion, but initially shall be no more often than every 120 days in each period of 12 months.

#### 10 Provisions with respect to Stock

With respect to its Stock, each Obligor will:

- (a) at all times maintain perpetual stock records acceptable to the Agent, or in the case of retail business of Rosentha other inventory control and tracking procedures acceptable to the Agent, which shall accurately itemise and describe (i) the kind, type, quality and quantity of such Stock, (ii) the cost of such Stock and (iii) the daily additions to/withdrawals from such Stock;
- (b) conduct a physical count of such Stock at least once a year and (if an Event of Default is continuing) at such other times as the Agent may require, and deliver to the Agent a report acceptable to it with respect to such count;
- (c) (except for sales of Stock in the ordinary course of trading and movements of Stock previously approved by the Agent in writing) not remove any Stock from property controlled by it or from a public warehouse;
- (d) produce, use, store and maintain its Stock with reasonable care and in accordance with all insurance and regulatory requirements;
- (e) not, without the Agent's prior written consent, sell any Stock exceeding €10,000 on sale or return or similar terms; and
- (f) keep the Stock in good and marketable condition and not (without the prior written consent of the Agent) accept any consignment stock.

#### 11 Provisions with respect to Financial Statements and Audit

- (a) Each set of financial statements delivered by the Company pursuant to the provisions of this schedule shall be certified by a director of the relevant company as fairly representing its financial condition as at the date as at which those financial statements were drawn up. The Company shall procure that all audited financial statements of the Group so delivered are (i) prepared by Price Waterhouse Coopers,

KPMG, Deloitte or Ernst & Young or other auditors previously approved by the Agent and (ii) prepared in accordance with GAAP and using accounting principles and policies which are consistently applied.

- (b) Each Obligor will permit the Agent or its appointed representatives or agents at the relevant Obligor's expense to conduct an audit of its financial records, systems and forecasts on a quarterly basis or, following a Default at more frequent intervals as the Agent may stipulate and will afford all co-operation to the Agent and its representatives or agents to enable such audit to take place.

## 12 Reporting to Senior Tranche B Lender

The Company shall provide to the Senior Tranche B Lender copies of all documentation required to be provided hereunder at the same time as they are provided to the Agent, as well as such additional information as may be reasonably requested by the Senior Tranche B Lender.

## 13 Definitions

“**Eligible Receivables**” means, at any time, any Receivables at such time which are evidenced by an invoice rendered by a Borrower or a Canadian Guarantor to account debtors save for any Receivable which (in the opinion of the Agent acting in good faith and using its reasonable credit judgement):

- (a) does not arise from the actual and bona fide sale and delivery of goods or rendering of services in the ordinary course of the business of the relevant Borrower or a Canadian Guarantor;
- (b) remains fully or partly unpaid after its Maturity Date or such longer period as may be agreed by the Agent;
- (c) is owing by a single account debtor if Receivables representing 50% or more of the aggregate balance owing by such account debtor to the Borrowers and the Canadian Guarantors are not Eligible Receivables;
- (d) is owed by a director, officer, employee or Affiliate of any Obligor;
- (e) is the subject of an (alleged) counterclaim or set off to the extent of such (alleged) counterclaim or set off;
- (f) arises from or relates to a contract in respect of which (i) performance has not been completed by the relevant Borrower or Canadian Guarantor, (ii) no invoice has been rendered or (iii) the relevant Borrower or Canadian Guarantor is not entitled to effect an assignment;
- (g) involves an account debtor which is the subject of any winding up, administration, examination or similar procedure indicative of insolvency;
- (h) involves an account debtor whose obligation to pay the Receivable is in any respect conditional or subject to any right of return, rejection or similar right;
- (i) is owed by an account debtor incorporated or resident in any country other than (a) Australia, Canada, Switzerland, Norway, or any country which was a Member State

of the European Union on 30 April 2004 and (b) the United States of America and which is not insured under arrangements which are acceptable to the Agent in its discretion;

- (j) is owed by an account debtor whose total indebtedness to the Obligors exceeds any credit limit set by the Agent from time to time;
- (k) is affected by proceedings or actions which are threatened or pending against the relevant account debtors and which may result in any material adverse change in any such account debtor's financial condition;
- (l) represents amounts owing by a concessionaire where the relevant receipts are credited to a bank account of the host store;
- (m) is subject to facts, events or occurrences which would impair the validity, enforceability, collectability or full recoverability of that Receivable (whether on account of the jurisdiction in which it is situated, the legal system applicable to it or any other matter);
- (n) is owing by any governmental, intergovernmental or supranational body, agency, Crown corporation, department or regulatory, self-regulatory or other authority or organisation;
- (o) is owing by a single account debtor to the extent of the value of Receivables owing by that account debtor exceeding 25% or more of all Eligible Receivables at that time;
- (p) is the subject of a past due credit, rebate or other similar treatment by the relevant Borrower; or
- (q) is otherwise determined by the Agent in good faith and in its reasonable credit judgement not to be an Eligible Receivable.

**"Eligible Stock"** means all Stock save for any Stock which, at any time and in the opinion of the Agent, acting in good faith and using its reasonable credit judgement:

- (a) is obsolete, slow-moving, not in good condition or not currently usable or saleable as reasonably determined by the Agent;
- (b) is held at third party premises without acceptable access arrangements for the Agent;
- (c) constitutes materials over which the Agent does not have a valid first ranking fixed or floating charge under the Security Documents;
- (d) constitutes consumables used in a Borrower's or Canadian Guarantor's business or constitutes packaging or shipping materials;
- (e) constitutes returned, damaged or defective materials;
- (f) is held by a Borrower or a Canadian Guarantor as consignee for a third party;
- (g) is not the property of the relevant Borrower or Canadian Guarantor by virtue of retention of title or Romalpa provisions in favour of any person;



- (h) is spare parts or scrap;
- (i) constitutes retail or other inventory held in the possession or control of a retailer or other person or otherwise outside the control of the relevant Borrower or Canadian Guarantor;
- (j) constitutes retail inventory where the Net Stock Value exceeds the arm's length wholesale price (but only to the extent of the excess);
- (k) constitutes inventory subject to third party trade mark, licensing or other proprietary rights, unless the Agent is satisfied that inventory can be sold by the Agent on satisfactory terms in the event of a Default;
- (l) is unsuitable for forming the basis of a lending decision as a result of any legal, regulatory or similar consideration; or
- (m) is otherwise determined by the Agent in good faith and in its reasonable credit judgement not to be Eligible Stock.

**(B) FINANCIAL UNDERTAKINGS**

1 Subject to 2 below, the Company shall procure that in respect of each Review Period:

- (a) the ratio of Senior Debt to EBITDA shall at no time be greater than the corresponding amount set out in column B of the table below; and
- (b) Trading Cashflow shall not be less than the corresponding amount in column C of the table below:

(A) REVIEW PERIOD (ending on or about)	(E) RATIO OF SENIOR DEBT TO EBITDA	(C) MINIMUM TRADING CASHFLOW (€ million)
<u>Fiscal 2006</u>		
12.05	4.00 to 1.00	(EUR55mm)
01.06	4.00 to 1.00	(EUR55mm)
02.06	4.00 to 1.00	(EUR40mm)
03.06	4.00 to 1.00	(EUR20mm)
<u>Fiscal 2007</u>		
04.06	3.75 to 1.00	(EUR10mm)
05.06	3.75 to 1.00	0
06.06	3.75 to 1.00	0
07.06	3.50 to 1.00	0
08.06	3.50 to 1.00	EUR5mm
09.06	3.50 to 1.00	EUR5mm
10.06	3.25 to 1.00	EUR10mm
11.06	3.25 to 1.00	EUR10mm
12.06	3.25 to 1.00	EUR15mm

01.07	3.00 to 1.00	EUR15mm
02.07	3.00 to 1.00	EUR15mm
03.07	3.00 to 1.00	EUR20mm
<b><u>Fiscal 2008</u></b>		
04.07	3.00 to 1	EUR20mm
05.07	3.00 to 1	EUR20mm
06.07	3.00 to 1	EUR20mm
07.07	3.00 to 1	EUR20mm
08.07	3.00 to 1	EUR20mm
09.07	3.00 to 1	EUR20mm
10.07	3.00 to 1	EUR25mm
11.07	3.00 to 1	EUR25mm
12.07	3.00 to 1	EUR25mm
01.08	3.00 to 1	EUR25mm
02.08	3.00 to 1	EUR25mm
03.08	3.00 to 1	EUR25mm
<b><u>Fiscal 2009</u></b>		
04.08	2.75 to 1.00	EUR30mm
05.08	2.75 to 1.00	EUR30mm
06.08	2.75 to 1.00	EUR30mm
07.08	2.75 to 1.00	EUR30mm
08.08	2.75 to 1.00	EUR30mm
09.08	2.75 to 1.00	EUR30mm
10.08	2.75 to 1.00	EUR30mm
11.08	2.75 to 1.00	EUR30mm
12.08	2.75 to 1.00	EUR30mm
01.09	2.75 to 1.00	EUR30mm
02.09	2.75 to 1.00	EUR30mm
03.09	2.75 to 1.00	EUR30mm
<b><u>Fiscal 2010</u></b>		
04.09	2.5 to 1.00	EUR35mm
05.09	2.5 to 1.00	EUR35mm
06.09	2.5 to 1.00	EUR35mm
07.09	2.5 to 1.00	EUR35mm
08.09	2.5 to 1.00	EUR35mm
09.09	2.5 to 1.00	EUR35mm
10.09	2.5 to 1.00	EUR35mm
11.09	2.5 to 1.00	EUR35mm
12.09	2.5 to 1.00	EUR35mm
01.10	2.5 to 1.00	EUR35mm
02.10	2.5 to 1.00	EUR35mm
03.10	2.5 to 1.00	EUR35mm
<b><u>Fiscal 2011</u></b>		
04.10	2.5 to 1.00	EUR35mm
05.10	2.5 to 1.00	EUR35mm
06.10	2.5 to 1.00	EUR35mm

- 2 The financial covenants shall be tested monthly at the end of each Review Period and prior to each Utilisation under the Senior Facility, but only if at such time Excess Availability is (or, in the case of a proposed Utilisation of the Senior Facility upon giving effect to that Utilisation as if it had been made, would be) less than €15,000,000. "Excess Availability" means the amount by which (i) the lesser of (a) the amount represented by the Total Senior Commitments and (b) the sum of (A) Total Availability plus (B) the outstanding principal balance of the Equipment Loan plus (C) the outstanding principal balance of the Property Loan exceeds (ii) total Utilisations outstanding under the Senior Facility (other than under the Ancillary Facility).

(C) **RELEASE OF CASH COLLATERAL**

- 1 If,
- (a) during the last 30 days of any Review Period commencing after the end of the first anniversary of the date of this Agreement, the Company has complied with the Fixed Charge Coverage Ratio and, on an average daily basis, the Minimum Excess Availability requirements for that Review Period specified below; and
  - (b) the Agent is satisfied that during the first 30 days of the immediately following Review Period (and taking into account any Cash Release Amount) the Company will comply, with the Fixed Charge Coverage Ratio and on an average daily basis, the Minimum Excess Availability requirements for that Review Period specified below,

the Company or Glandore Limited may require that there is released to Glandore Limited an amount of the Cash Deposit up to but not exceeding the Cash Release Amount.

- 2 For paragraph 1 above to apply, the Company must maintain both the Fixed Charge Coverage Ratio and the Minimum Excess Availability in the Review Periods immediately preceding and following the date of determination in one of the following combinations:

Minimum Fixed Charge Coverage Ratio	Minimum Excess Availability
1:1	€60,000,000
1.5:1	€50,000,000
2:1	€45,000,000

- 3 The "Cash Release Amount" is that amount of the Cash Deposit (which shall be no less than €10,000,000 or the balance of the Cash Deposit if lower) which the Agent is satisfied may be released from the Cash Deposit such that the Company would have been, and will remain, in compliance with its obligations in relation to maintaining its Fixed Charge Coverage Ratio and Minimum Excess Availability requirements for the last 30 days of the Review Period immediately ended and the first 30 days of the Review Period next following that Review Period immediately ended.
- 4 The Agent shall itself only draw funds from the Cash Deposit or apply the Cash Deposit in any way if insolvency proceedings as set-out in Clause 30.6 have been commenced at least six

months prior to the date of such drawing or application, and such drawings shall not exceed the aggregate of the Utilisations outstanding under this Agreement.

**(D) MARGIN ADJUSTMENT - SENIOR FACILITY**

1 If at any time:

- (a) the Company delivers monthly management accounts to the Agent in accordance with the provisions of paragraph (A) 3 (d) of this Schedule; and
- (b) the conditions noted in the ensuing paragraphs of this paragraph (D) have been satisfied,

then the Senior Margin shall be adjusted in accordance with the provisions set out below.

2 Subject to paragraph 3 below, if the monthly management accounts so delivered to the Agent disclose that, during the relevant period, Excess Availability:

- (a) for more than three Business Days, was less than €40,000,000, then the Senior Margin shall be set at 3.25 per cent. per annum in respect of any LIBOR Revolving Loan, any Property Loan and any Equipment Loan and at 1.75 per cent per annum in respect of any Base Rate Revolving Loan;
- (b) other than on three Business Days or less, was equal to or greater than €40,000,000, then the Senior Margin in respect of any LIBOR Revolving Loan, any Property Loan and any Equipment Loan shall be set at 3.00 per cent. per annum and the Senior Margin in respect of any Base Rate Revolving Loan shall be set at 1.5 per cent per annum;
- (c) other than on three Business Days or less, was equal to or greater than €80,000,000 then the Senior Margin shall be set at 2.75 per cent. per annum in respect of any LIBOR Revolving Loan, any Property Loan and any Equipment Loan and at 1.25 per cent per annum in respect of any Base Rate Revolving Loan;
- (d) other than on three Business Days or less, was equal to or greater than €120,000,000 then the Senior Margin shall be set at 2.50 per cent. per annum in respect of any LIBOR Revolving Loan, any Property Loan and any Equipment Loan and at 1.00 per cent per annum in respect of any Base Rate Revolving Loan.

3 No reduction in the Senior Margin pursuant to paragraph 2 above shall take effect unless the following conditions are also satisfied at the time of delivery of the relevant financial statements to the Agent:

- (a) no Default has occurred and is continuing; and
- (b) in the case of paragraphs 2(c) and (d) above, the Fixed Charge Coverage Ratio for the relevant period was equal to or more than 1.1:1

4 The foregoing provisions of this paragraph (D) shall be applied on each occasion on which monthly management accounts are delivered to the Agent in accordance with paragraph (A) 3 (d) of this Schedule and:

- (a) if such monthly management accounts disclose that, in the case of paragraph (c) and (d), in respect of the relevant period, the conditions set out in paragraph 3 above have not been met in respect of that period, then the Senior Margin shall remain at or be restored to 3 per cent. per annum; and
- (b) otherwise, the Senior Margin shall be increased or reduced to the appropriate level in accordance with the provisions of paragraphs 2(a), (b), (c) and (d) above.

5 Any adjustment in the Senior Margin in accordance with the foregoing provisions shall have effect with respect to any interest which accrues after the date of delivery of the relevant monthly management accounts to the Agent.

6 If the Company fails to deliver any monthly management accounts when due in accordance with paragraph (A) 3 (d) of this Schedule, the Senior Margin shall thereupon be set to 3.25 per cent. per annum in respect of any LIBOR Revolving Loan, any Property Loan and any Equipment Loan and at 1.75 per cent per annum in respect of any Base Rate Revolving Loan.

(E) **MARGIN ADJUSTMENT - SENIOR TRANCHE B FACILITY**

1 If at any time:

- (a) the Company delivers monthly management accounts to the Agent in accordance with the provisions of paragraph (A) 3 (d) of this Schedule; and
- (b) the conditions noted in the ensuing paragraphs of this paragraph (E) have been satisfied,

then the Senior Tranche B Margin shall be adjusted in accordance with the provisions set out below.

2 Subject to paragraph 3 below, if the monthly management accounts so delivered to the Agent disclose that, during the relevant period, Adjusted Excess Availability was less than €30,000,000 on any 3 Business Days or more, then the Senior Tranche B Margin shall be increased to and remain at 9.25 per cent. per annum (in the case of a Senior Tranche B Loan referencing STB LIBOR) and to 8.25 per cent. per annum (in the case of a Senior Tranche B Loan referencing Prime Rate), subject to reduction in accordance with paragraph 3 below.

3 The foregoing provisions of this paragraph (E) shall be applied on each occasion on which monthly management accounts are delivered to the Agent in accordance with paragraph (A) 3 (d) of this Schedule. Following an increase in the Senior Tranche B Margin pursuant to paragraph 2 above, if the monthly management accounts disclose that during any 3 month period, other than for 3 Business Days or less in each calendar month during that 3 month period, Adjusted Excess Availability was more than €50,000,000 then the Senior Tranche B Margin shall be decreased to 8.25 per cent per annum (in the case of a Senior Tranche B Loan referencing STB LIBOR) and to 7.25 per cent per annum (in the case of a Senior Tranche B Loan referencing Prime Rate) subject to further increase and decrease from time to time in accordance with the foregoing. **“Adjusted Excess Availability”** means Excess Availability minus the portion of Total Availability attributable to the Receivables and/or Stock of the Borrowers which are not also Guarantors.

- 4 Any adjustment in the Senior Tranche B Margin in accordance with the foregoing provisions shall have effect with respect to any interest which accrues after the date of delivery of the relevant monthly management accounts to the Agent.
- 5 If the Company fails to deliver any monthly management accounts when due in accordance with paragraph (A) 3 (d) of this Schedule, the Senior Tranche B Margin shall thereupon be increased to the higher margins set forth above, until such time as the Company delivers those monthly management accounts, whereupon the assessment pursuant to paragraph 2 above shall be made.

**SCHEDULE 4**  
**PROVISIONS APPLICABLE TO PARTICIPATING LENDERS AND THE ADMINISTRATION OF THE**  
**SENIOR FACILITY**

**1 OPTION TO BECOME A PARTICIPATING LENDER**

A Lender may by notice to the Agent (on or before the date such Lender becomes a Lender hereunder or such later date as the Agent may agree), at its option, elect to be a Participating Lender in relation to Utilisations denominated in those Permitted Currencies which may be agreed upon by it with the Agent. Promptly upon the receipt of such notice, the Agent shall notify each Funding Lender of such election by a that Lender. To the extent that any such Lender has exercised such option and provided such notice to the Agent, such Participating Lender shall be deemed to have, and hereby agrees to, irrevocably purchase from the Funding Lenders, and the Funding Lenders shall be deemed to have sold, and hereby agree to sell, to such Participating Lender an unfunded risk participation in the Utilisations of Non-US Borrowers from time to time outstanding on the terms and conditions of this Agreement, with the participation interest of such Participating Lender to be in an amount equal to its Pro Rata Share.

**2 OBLIGATIONS OF THE FUNDING LENDERS**

So long as any Lender has elected to be a Participating Lender, unless and until a Participation Settlement Date (as defined below), the Funding Lenders shall fund, in accordance with the terms hereof, the Utilisations of the Non-US Borrowers that would otherwise be required to be funded by such Participating Lender in the amount of the Pro Rata Share of such Participating Lender. The Participating Lender shall at all times fund its Pro Rata Share of the Utilisations of the US Borrowers in accordance with the terms of this Agreement. Each Funding Lender shall fund the Pro Rata Share of Participating Lenders in the Utilisations of Non-US Borrowers in such proportions as the Funding Lenders may agree, subject to the approval of the Agent in each instance as to any such agreement.

**3 FUNDING FOLLOWING AN EVENT OF DEFAULT**

- (a) If at any time an Event of Default has occurred and is continuing, the Agent or any Funding Lender shall have the right, upon written notice (a “**Participation Funding Notice**”) to the Agent and to each Lender to require all of the Lenders to thereafter fund their respective shares of the Utilisations of all Borrowers, including in the case of the Participating Lenders, the Non-US Borrowers and for the Participating Lenders to make payments to the Funding Lenders in respect of the participation of such Participating Lenders in the amounts funded by the Funding Lenders.
- (b) Within three (3) Business Days after the receipt by the Agent of the Participation Funding Notice, the Agent shall deliver to each Lender, a summary statement of the amount of outstanding Utilisations as of the close of business on the Business Day immediately preceding the date of such summary statement (such date being the “**Participation Settlement Date**”). Such summary statement shall state the amount of each category of Utilisation and the currency in which each Utilisation is denominated and the amount each Participating Lender is required to fund (as to each Participating Lender, the “**Participation Amount**”), in each case so that after giving effect thereto the aggregate amount of all funds provided to the Agent by such

Participating Lender equals its Pro Rata Share of the Utilisations of each Borrower (whether a US Borrower or a Non-US Borrower) as of the Participation Settlement Date. If the summary statement is sent by the Agent and received by a Participating Lender prior to 12:00 p.m. New York City time then such Participating Lender shall pay to the Agent for the account of the Funding Lenders in immediately available funds, the applicable Participation Amount in the currency or currencies specified in the summary statement by no later than 3:00 p.m. New York City time on the same Business Day and if received by a Participating Lender after 12:00 p.m. New York City time then such Lender shall make such payment to Agent by not later than 3:00 p.m. New York City time on the next Business Day following the date of receipt. Upon receipt of such funds from a Participating Lender, the Agent shall promptly pay to each Funding Lender its share of the Participation Amount. On and after the Participation Settlement Date, the Funding Lender shall cease to make any funds available in respect of the US Lenders' shares of any Utilisations, except as the Parties may otherwise agree.

#### 4 **OBLIGATIONS UNCONDITIONAL**

The obligations of each Participating Lender under the terms of this Schedule 4 are irrevocable and shall not be subject to any qualification or exception whatsoever and shall be performed in accordance with this Agreement under all circumstances, including, without limitation, any of the following circumstances:

- (a) any lack of validity or enforceability hereof or of any of the other Finance Documents;
- (b) the existence of any claim, set-off, defence or other right which any Borrower may have at any time against the Agent, any Lender, or any other person, whether in connection with the Finance Documents or any unrelated transactions;
- (c) any adverse change in the condition (financial or otherwise) of any Obligor;
- (d) any breach of this Agreement by any Borrower, Guarantor, the Agent, or any Lender;
- (e) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Finance Documents;
- (f) the occurrence of any Event of Default or Default; or
- (g) any other circumstance, happening, or event whatsoever, whether or not similar to any of the foregoing.

#### 5 **DEFAULT BY PARTICIPATING LENDER**

If and to the extent to which any Participating Lender shall not have made available to the Agent on the Participation Settlement Date any amount payable by such Lender pursuant to this the terms of this Schedule 4, such Lender agrees to pay to the Agent (for the account of the Funding Lenders) forthwith on demand such amount in the applicable currency together with interest thereon, for each day from the Participation Settlement Date until the date such amount is paid to the Agent, at the rate conclusively certified by the Agent to represent its cost of funding the unpaid sum. If such amounts are not paid within three days of the Agent's demand, then they



shall bear at the highest rate of interest provided for in Clause 18 (*Default Interest*). The failure of any such Participating Lender to make available to the Agent for the account of the Funding Lenders its Participation Amount shall neither relieve any other Lender of its obligation to make available to the Agent for the account of the Funding Lenders such other Participating Lender's Participation Amount on the date such payment is to be made nor increase the obligation of any other Participating Lender to pay its Participation Amount to the Agent. A Participating Lender that fails to pay to the Agent its Participation Amount shall be deemed a "Defaulting Lender" and subject to all of the terms with respect thereto set out in the ensuing provisions of this Schedule 4.

## 6 **FUNDING BY PARTICIPATING LENDERS**

On and after the Participation Settlement Date, each Senior Lender, including Participating Lenders, shall provide such funds pursuant to a Utilisation Request on the Utilisation Date as provided herein or to the Agent pursuant to the settlements provided for below, as the case may be, in each case in the currency or currencies specified therein and for the account of the Borrower specified therein.

## 7 **ADMINISTRATIVE MATTERS**

In order to administer the Facilities in an efficient manner and to minimize the transfer of funds between the Agent and Senior Lenders, in lieu of requiring each Lender (including any Funding Lender) to provide the Agent with immediately available funds representing its Pro Rata Share of each Utilisation prior to the disbursement of such amounts to a Borrower, the Agent may, at its option, subject to the terms of this paragraph 7, make available, on behalf of the Senior Lenders, the full amount of the Utilisation requested or otherwise to be advanced by Lenders pursuant to the terms hereof, without requirement of prior notice to Lenders of the proposed Utilisation.

- (a) With respect to all Utilisations made by the Agent on behalf of Senior Lenders as provided in this Section, the amount of each Senior Lender's Pro Rata Share of the outstanding Utilisations shall be computed weekly, and shall be adjusted upward or downward on the basis of the amount of the outstanding Loans as of 5:00 p.m. London time on the Business Day immediately preceding the date of each settlement computation; provided that the Agent retains the absolute right at any time or from time to time to make the above described adjustments twice in any week. The Agent shall deliver to each of the Senior Lenders (including Funding Lenders and Participating Lenders) after the end of each week, or at such lesser period or periods as the Agent shall determine, a summary statement of the amount of outstanding Utilisations for such period (such week or lesser period or periods being hereinafter referred to as a "**Settlement Period**").
- (b) If the summary statement is sent by the Agent and received by a Lender prior to 12:00 p.m. New York City time as to a US Lender, London time as to a Non-US Lender then such Lender shall make the settlement transfer described in this Sub-Clause by no later than 3:00 p.m. New York City time as to a US Lender, or London time as to a Non-US Lender on the same Business Day and if received by a Lender after 12:00 p.m. New York City time as to a US Lender, or London time as to a Non-US Lender then such Lender shall make the settlement transfer by not later than 3:00 p.m. New York City time as to a US Lender, or London time as to a Non-US Lender on the next Business Day following the date of receipt. Except as to a Participating

Lender to the extent of its unfunded risk participation and funding on its behalf by Funding Lenders as provided herein, prior to a Participation Settlement Date (A) if, as of the end of any Settlement Period, the amount of a Lender's Pro Rata Share of the outstanding Utilisations is more than such Lender's Pro Rata Share of the outstanding Utilisations as of the end of the previous Settlement Period, then such Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to the Agent the amount of the increase or (B) alternatively, if the amount of a Lender's Pro Rata Share of the outstanding Utilisations in any Settlement Period is less than the amount of such Lender's Pro Rata Share of the outstanding Utilisations for the previous Settlement Period, the Agent shall forthwith transfer to such Lender the amount of the decrease. A Participating Lender shall not be subject to the foregoing as to Utilisations of Non-US Borrowers to the extent that Funding Lenders are funding the share of such Participating Lender of such Utilisations as provided herein prior to a Participation Settlement Date. For the purposes of such settlements prior to a Participation Settlement Date, the Funding Lenders shall be deemed to have a Pro Rata Share calculated based on the Pro Rata Share of the Participating Lenders, but only as to the Utilisations of the Non-US Borrowers and shall settle with the Agent accordingly and the Pro Rata Share of each Participating Lender shall be reduced by the portion of such Pro Rata Share that has been funded on its behalf by the Funding Lenders in respect of the Utilisations of the Non-US Borrowers. A Participating Lender shall be subject to the foregoing procedures for settlement transfers using the full Pro Rata Share of such Lender as to Utilisations of Non-US Borrowers at all times on and after a Participation Settlement Date. Each amount payable by a Lender to the Agent hereunder shall be paid in the currency specified by the Agent based on the currencies in which the then outstanding Utilisations are denominated or if the Agent so agrees, such other currencies as the Agent may accept but subject to such charges and expenses as the Agent may require in order to convert such other currencies to the extent required.

- (c) The obligation of each Lender to transfer such funds and effect such settlement shall be irrevocable and unconditional and without recourse to or warranty by the Agent. The Agent and each Lender agrees to mark its books and records at the end of each Settlement Period to show at all times the Euro amount of its Pro Rata Share of the outstanding Utilisation. Each Lender shall only be entitled to receive interest on its Pro Rata Share of the Utilisations to the extent such Utilisations have been funded by such Lender. Because the Agent on behalf of Lenders may be advancing and/or may be repaid Utilisations prior to the time when Lenders will actually advance and/or be repaid such Utilisations, interest and commissions with respect to Utilisations shall be allocated by the Agent in accordance with the amount of the funds actually advanced by and repaid to each Lender and the Agent and shall accrue from and including the date such funds are so advanced to but excluding the date such Utilisations are either repaid by Borrowers or actually settled with the applicable Lender as described in this Sub-Clause.

## 8 RECOVERY FROM LENDERS

If the Agent makes any amounts available to a Borrower hereunder and any Lender fails to make a payment to the Agent hereunder pursuant to the settlement provided above or otherwise, the Agent shall be entitled to recover such amount on demand from such Lender together with

interest thereon for each day from the date such payment was due until the date such amount is paid to the Agent at the rate or rates of interest referred to in paragraph 5 above.

- (a) During the period in which such Lender has not paid such amount to the Agent, notwithstanding anything to the contrary contained in this Agreement or any of the other Finance Documents, the amount so advanced by the Agent to or for the benefit of any Borrower shall, for all purposes hereof, be a Loan made by the Agent for its own account. Upon any such failure by a Lender to pay the Agent, the Agent shall promptly thereafter notify the Company of such failure and the Borrowers shall pay such corresponding amount to the Agent for its own account within five (5) Business Days of the Company's receipt of such notice.
- (b) A Lender who fails to pay the Agent its Pro Rata Share of any Utilisation made available by the Agent on such Lender's behalf, or any Lender who fails to pay any other amount owing by it to Agent, is a "**Defaulting Lender**". The Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal, interest or fees). Amounts payable to a Defaulting Lender shall instead be paid to or retained by the Agent. The Agent may hold and, in its discretion, relend to a Borrower the amount of all such payments received or retained by it for the account of such Defaulting Lender. For purposes of voting or consenting to matters with respect to this Agreement and the other Finance Documents and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a "**Lender**" and such Lender's Commitment shall be deemed to be zero (0). This Sub-Clause shall remain effective with respect to a Defaulting Lender until such default is cured. The operation of this Sub-Clause shall not be construed to increase or otherwise affect the Commitment of any other Lender, or relieve or excuse the performance by any Obligor of their duties and obligations hereunder.

## 9 **ANCILLARY FACILITIES**

The provisions of this Schedule 4 do not apply with respect to the Ancillary Facilities nor do they apply with respect to the Senior Tranche B Facility.

**SCHEDULE 5**  
**FORMS OF NOTICE AND REQUEST**

**Part I (A)**  
**Form of Receivables Notice**

**Part I (B)**  
**Form of Stock Notice**

**Part II**  
**Form of Cash Request**

[On letterhead of relevant Borrower]

Date: [ ]

To: Bank of America, N.A.  
[ ]

Attention:

Dear Sirs,

**Facility Agreement dated [ ] (the "Facility Agreement")**

We refer to the Facility Agreement. Terms defined in the Facility Agreement have the same meaning when used in this Cash Request.

Pursuant to the terms of the Facility Agreement, we wish to borrow on [ ] (the "**Utilisation Date**"):

- (a) a Swingline Loan [in the amount of € ] [in the Original Euro Amount of € ] [in *[specify Permitted Currency]*]
  
- (b) a [Base Rate/Reference Rate/LIBOR] Revolving Loan [in the amount of € ] [in the Original Euro Amount of € ] [in *[specify Permitted Currency]*] having an initial Interest Period of [ ] months,

[in each case] upon the terms and subject to the conditions contained in the Facility Agreement.

In respect of this requested Utilisation, please credit the following account:

Account Name: [ ]  
Bank: [ ] Bank plc  
Branch: [ ] Branch  
Account No: [ ]  
Sort Code: [ ]

We confirm that the conditions specified in Clause 4.2 (*Further Conditions Precedent*) are satisfied as at the date of this Cash Request and that no Availability Limit would be breached by the making of the requested Utilisation.

Yours faithfully

for and on behalf of  
[Borrower]

**Part III**  
**Form of L/C Request**

[On letterhead of relevant Borrower]

Date: [       ]

To: Bank of America, N.A.  
[       ]

Attention:

Dear Sirs,

**Facility Agreement dated [       ] (the "Facility Agreement")**

We refer to the Facility Agreement. Terms defined in the Facility Agreement have the same meaning when used in this L/C Request.

We wish to have [state type of L/C] opened for our account under the Facility Agreement as follows:

- (a) Issue Date: [       ]
- (b) Expiry Date: [       ]
- (c) Requested Amount: [       ]
- (d) Beneficiary: [       ]
- (e) Beneficiary's bank account: [       ]
- (f) Concerning: [Reference the agreement under which the liability arises, describe its nature and quantify it]

We confirm that the conditions precedent specified in Clause 4.2 (*Further Conditions Precedent*) are satisfied on the date of this L/C Request and that no Availability Limit will be breached as a result of the requested Utilisation.

Yours faithfully

for and on behalf of  
[Borrower]

**Part IV**  
**Form of Term Loan Request**

[On letterhead of Company/[ ]]

Date: [ ]

To: Bank of America, N.A.  
[ ]

Attention:

Dear Sirs,

**Facility Agreement dated [ ] (the "Facility Agreement")**

We refer to the Facility Agreement. Terms defined in the Facility Agreement have the same meaning when used in this Request.

We wish to draw the [Equipment Loan] [and the] [Property Loan] as follows:

- (a) Amount: Equipment Loan €[ ] ([AMOUNT IN WORDS])
- (b) Property Loan €[ ] ([AMOUNT IN WORDS])
- (c) Utilisation Date: Equipment Loan [ ]
- (d) Property Loan [ ]
- (e) Payment Instructions: [In each case, please][Please] credit the following account:

Account Name: [ ]  
Bank: [ ] Bank plc  
Branch: [ ] Branch  
Account No: [ ]  
Sort Code: [ ]

We confirm that the conditions precedent specified in Clause 4.2 (*Further Conditions Precedent*) are satisfied as at the date of this Term Loan Request and that no Availability Limit will be breached by the making of the requested Utilisation.

Yours faithfully

for and on behalf of  
[the Company/[ ]]