



Companies House

MR01(ef)

Registration of a Charge

Company name: **ALLIED CARBON TRADING LTD.**

Company number: **07316385**

Received for Electronic Filing: **19/06/2013**



X2ATWAR6

Details of Charge

Date of creation: **11/06/2013**

Charge code: **0731 6385 0001**

Persons entitled: **RAIFFEISEN BANK INTERNATIONAL AG**

Brief description:

Contains fixed charge(s).

Notification of addition to or amendment of charge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7316385

Charge code: 0731 6385 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th June 2013 and created by ALLIED CARBON TRADING LTD. was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th June 2013 .

Given at Companies House, Cardiff on 19th June 2013



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

DATED 19th JUNE 2013

(1) RAIFFEISEN BANK INTERNATIONAL AG

(2) ALLIED CARBON TRADING LTD

DEED OF ASSIGNMENT

I certify that, save for material
redacted pursuant to s.859G
of the Companies Act 2006,
this copy instrument is a correct copy
of the original instrument.

N.E. Wardage
Norton Rose Fulbright LLP
Sign & Dated 19 June 2013

CONTENTS

CLAUSE

1	DEFINITIONS AND INTERPRETATION	1
2	ASSIGNMENT	3
3	NEGATIVE PLEDGE	4
4	UNDERTAKINGS	4
5	REPRESENTATIONS	5
6	ENFORCEMENT EVENTS	6
7	FURTHER ASSURANCE	6
8	POWER OF ATTORNEY	7
9	INDEMNITIES, COSTS AND EXPENSES	7
10	CONTINUING SECURITY AND OTHER MATTERS	8
11	CURRENCIES	9
12	MISCELLANEOUS	9
13	SUCCESSORS AND ASSIGNS	10
14	LIABILITY TO THIRD PARTIES	10
15	LAW AND JURISDICTION	10

SCHEDULE 1

NOTICE OF ASSIGNMENT

DEED OF ASSIGNMENT

BETWEEN

ALLIED CARBON TRADING LTD, a company duly organised and validly existing under the laws of England and Wales with its address at 10 Glencarron Close, Hoddlesden, Darwen, BB3 3RF,, England (the “**Assignor**”); and

Raiffeisen Bank International AG a bank registered under the laws of Austria and having its registered office at Am Stadtpark 9, 1030 Vienna, Austria (the “**Bank**”).

BACKGROUND

- (A) The Bank has agreed to make available to the Assignor a facility upon and subject to the terms and conditions set out in a facility agreement dated on or about the date of this Deed and entered into by the Bank as lender and by the Assignor as borrower (the “**Agreement**”).
- (B) *It is a condition to the Agreement that the Assignor will grant the security referred to in this Deed in favour of the Bank to secure the obligations assumed by the Assignor under the Agreement.*

Now it is hereby agreed as follows

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

‘Assigned Rights’	means, with respect to Goods, all rights title, benefits, interests and claims, whether present or future, contractual or otherwise, of the Assignor: (a) against counterparties of the Assignor under Sales Contracts; and (b) in all letters of credit, guarantees, indemnities, Encumbrances and other forms of credit support issued in relation to a Sales Contract; together with all proceeds therefrom and including any preferential and accessory rights thereto (such as guaranties, pledged rights, rights of retention, claims due to reservation of ownership, rights to the surrendering of goods, rights which have been transferred in trust, insurance claims, etc.) as well as all claims for damages, indemnities, compensation or other remedies, in each case, to the extent that they are assignable.
‘Contracts’	means the Sales Contracts;
‘Encumbrance’	means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or other agreement or

arrangement having similar effect;

'Goods'	means coal tar pitch, carbon black feedstock and other coal tar by-product acceptable to the Bank which have been or are being financed by the Bank in whole or in part, under the Agreement whether by letters of credit, Payment Instruments, facilities, advances or otherwise;
'Payment Instruments'	means all letters of credit, guarantees, bonds, indemnities, promissory notes, cheques, bills of exchange, undertakings, standby letters of credit, or other similar instruments in respect of which the Assignor is the beneficiary or is entitled, and which relate to the sale of Goods ;
'Sales Contract'	means a sales contract concluded between the Assignor and a buyer for the sale and purchase of Goods;
'Secured Obligations'	means all liabilities of the Assignor to the Bank under or in connection with the Agreement.

1.2 In this Deed:

- (a) terms defined in the Agreement and not defined in this Deed will, where the context so admits, bear the same meaning in this Deed;
- (b) the contents page and clause headings are included for convenience only and do not affect the construction of this Deed;
- (c) words denoting the singular include the plural and vice versa; and
- (d) words denoting one gender include each gender and all genders.

1.3 In this Deed, unless the context otherwise requires or unless otherwise expressly provided, references to:

- (a) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, and trusts (in each case whether or not having a separate legal personality);
- (b) agreements and instruments (including this Deed and any agreement or instrument referred to in this Deed) are references to such agreements and instruments as modified, amended, varied, supplemented, replaced or novated in any manner whatsoever from time to time;
- (c) an authorisation include references to an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation and /or registration;
- (d) a party to this Deed include references to its successors, transferees and assigns;

- (e) references to receivers are references to receivers of whatsoever nature including, receivers and managers and administrative receivers,
- (f) Clauses and Schedules are references to clauses of, and schedules to, this Deed, and references to this Deed include its Schedules;
- (g) paragraphs, unless otherwise expressly provided, are references to paragraphs of the Schedule in which the references appear;
- (h) statutory provisions are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (i) a 'company' include references to any company, corporation or other body corporate, wherever and however incorporated or established;
- (j) a 'regulation' include references to any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (k) a time of day is a reference to Vienna time; and
- (l) 'including' as used herein does not limit the preceding words or terms and shall be read to be followed by the words "without limitation" or words having similar import.

2 ASSIGNMENT

- 2.1 The Assignor, with full title guarantee, assigns and agrees to assign to the Bank absolutely the Assigned Rights as a continuing security for the payment or discharge of the Secured Obligations.
- 2.2 The Assignors shall remain liable to perform all its obligations in respect of the Contracts and the Assigned Rights and the Bank shall not have any liability to any person (including the Assignor) to make any payment or take any action in respect of the Contracts or the Assigned Rights.
- 2.3 The Bank shall, at the request and cost of the Assignor, re-assign to the Assignor without any representation, recourse or warranty such of the Assigned Rights as have not been applied by the Bank in or towards satisfaction of the Secured Obligations if:
 - (a) the Assignor has irrevocably and unconditionally discharged in full all the Secured Obligations, and
 - (b) the Bank is under no further commitment, obligation or liability (present or future, actual, prospective or contingent) pursuant to the Agreement or any other related documents to make advances, incur any further liability or provide other financial accommodation which, if made or provided, would give rise to any Secured Obligations.

3 NEGATIVE PLEDGE

The Assignor will not, without the prior written consent of the Bank:

- (a) assign or otherwise create or permit to subsist any Encumbrance (other than in favour of the Bank) over any of the Assigned Rights;
- (b) do or omit to do anything which would rescind, cancel or otherwise terminate any Contract, or
- (c) do or omit to do anything which would reduce, jeopardise or otherwise prejudice the value to the Bank of the Assigned Rights.

4 UNDERTAKINGS

The Assignor:

- (a) irrevocably authorises the Bank to complete and serve any demands, notices and certificates to the Assignor's debtors in respect of the Assigned Rights as it may in its discretion deem appropriate, including notices of assignment in the form set out in the Schedule 1, and undertakes to issue and deliver promptly upon the Bank's request notices of assignment in form and substance satisfactory to the Bank to its debtors in respect of the Assigned Rights;
- (b) will procure that, in case requested by the Bank, in case any notices of assignment have been sent, the addressees of such notices shall duly acknowledge such notices and send the acknowledgment in the form set out in Schedule 1 to the Bank;
- (c) will duly perform all of its obligations under the Contracts;
- (d) will maintain or effect all authorisations at any time necessary to enable the Assignor to comply with and/or perform its obligations under this Deed and each Contract;
- (e) will not release or compromise any of the Assigned Rights or grant any waiver, time or other indulgence to any person in respect of the Assigned Rights;
- (f) will notify the Bank as soon as it becomes aware of:
 - (i) any breach by any party of any of the Contracts or any claim by any party of any purported breach of any of the Contracts; and
 - (ii) any claim by any person to any interest in any of the Assigned Rights;
- (g) will provide the Bank with all information from time to time required by it in relation to the Assigned Rights or any related matter; and
- (h) will ensure that each person liable to make any payment in respect of each Assigned Right is instructed to pay the same exclusively to an account of the

Assignor held with the Bank and that all invoices include such instructions, and will provide evidence thereof to the Bank promptly upon the Bank's request.

5 REPRESENTATIONS

5.1 The Assignor represents to the Bank that:

- (a) it is a company duly incorporated and validly existing under the laws of the place of its incorporation and has power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) it has the power to execute, deliver and perform its obligations under this Deed;
- (c) all necessary corporate and other action required to authorise the execution and delivery of this Deed, and the performance of its obligations in relation thereto, has been duly taken;
- (d) the obligations expressed to be assumed by it in this Deed are legal, valid and binding in accordance with the terms hereof;
- (e) it has not taken any corporate action nor have any steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, liquidator, trustee or similar officer for it or in respect of the whole or significantly all of its undertaking, assets or revenues;
- (f) no action or administrative proceedings of or before any court or agency which, if adversely determined, is reasonably likely to have a material adverse effect on its business or assets has been started or threatened;
- (g) all written information supplied by the Assignor in connection herewith is accurate in all material respects and the Assignor is not aware of any material fact or circumstance which has arisen, or any event that has occurred, that has not been disclosed to the Bank;
- (h) its execution of this Deed and its exercise of its rights and the performance of its obligations hereunder do not and will not:
 - (i) conflict with any agreement or other instrument to which it is a party or which is binding upon it or any of its assets;
 - (ii) conflict with its constitutional documents; or
 - (iii) conflict with any applicable law, regulation or, official or judicial order or authorisation;
- (i) the Contracts are in full force and effect;
- (j) it is the sole, lawful and beneficial owner and/or person entitled to the benefit of each of the Assigned Rights;

- (k) each of the Sales Contracts and the Supply Contracts is or will be when it comes into existence assignable without the consent of any person; and
- (l) the Assigned Rights are free from any Encumbrance or third-party rights.

5.2 The representations contained in Clause 5.1 shall be deemed to be repeated on each day whilst this security is continuing with reference to the circumstances existing on each such day.

6 ENFORCEMENT EVENTS

- 6.1 This Deed shall become enforceable if any event of default (as defined in clause 10 of the Agreement) has occurred (an "Enforcement Event").
- 6.2 At any time on or after an Enforcement Event occurs the Bank may:
 - (a) require and collect payment of the Assigned Rights; and/or
 - (b) appoint a receiver of all or any part of the Assigned Rights;
 - (c) without the consent or authority of the Assignor, sell, assign, transfer, negotiate or otherwise dispose of or deal with the Assigned Rights in such manner and generally on such terms and conditions and for such consideration as the Bank may in its absolute discretion think fit.
- 6.3 The Bank shall apply the proceeds of the sale or other disposal of the Assigned Rights as it shall deem fit in or towards the discharge of the Secured Obligations.
- 6.4 Neither the Bank nor its agents, managers, offices, employees, delegates and advisers shall be liable for any claim, demand, liability, loss, damage, cost or expense incurred or arising in connection with the exercise or purported exercise of any rights, powers and discretions under this Deed except in case of gross negligence or wilful misconduct.
- 6.5 The Bank shall in no circumstances be responsible for any loss in respect of the Assigned Rights or any Goods howsoever caused, including, while any Goods are in transit or after arrival or arising by reason of their not being fully insured or not insured as stipulated or for the stoppage or detention of any Goods by any person.
- 6.6 The Bank shall, in no circumstances, be liable to account as a mortgagee in possession of the Assigned Rights.
- 6.7 A receiver shall have all of the powers given to administrative receivers under the Insolvency Act 1986 and secondary legislation made under it.

7 FURTHER ASSURANCE

The Assignor, shall at its own expense and forthwith upon demand by the Bank execute such further documents in favour, or for the benefit, of the Bank and do all such assurances, acts and things as the Bank from time to time requires in relation to all or any of the Assigned Rights to:

- (a) secure the Secured Obligations;
- (b) perfect or protect its title to any of the Assigned Rights;
- (c) protect any of its rights under this Deed;
- (d) facilitate the appropriation or realisation of the Assigned Rights and enforce the security constituted by this Deed, on or at any time it has become enforceable;
or
- (e) exercise any power, authority or discretion vested in the Bank under this Deed.

8 POWER OF ATTORNEY

- 8.1 The Assignor irrevocably and by way of security appoints the Bank as its attorney in its name and on its behalf:
- (a) to execute, sign, complete all such documents which the Bank may require for perfecting the title of the Bank to the Assigned Rights or for vesting the same in the Bank, its nominee or any purchaser;
 - (b) to execute, sign, complete, do and, if required, register every such further assurance, document, act or thing required under this Deed; and
 - (c) otherwise generally to execute, sign, complete all documents and do all acts and things which may be required for the full exercise of any of the powers conferred on the Bank under this Deed or which may be deemed expedient by the Bank in connection with any appropriation or realisation by the Bank of the Assigned Rights or any part thereof upon enforcement or in connection with any other exercise of any power under this Deed.
- 8.2 The Assignor agrees, immediately at the request of the Bank, to ratify and confirm all acts, deeds, instruments and things signed, executed and done under the appointment contained in this Clause.

9 INDEMNITIES, COSTS AND EXPENSES

- 9.1 The Assignor shall indemnify the Bank and any receiver or other person appointed by the Bank under this Deed on demand in respect of all costs, charges and expenses (including reasonable legal fees, stamp duty, registration fees and other documentary taxes and duties) suffered or incurred by or on behalf of the Bank and any receiver or other person appointed by the Bank under this Deed or in connection with the preparation, execution and enforcement of this Deed on a full indemnity basis.
- 9.2 The Assignor shall indemnify the Bank and any attorney, agent or other person appointed by the Bank under this Deed on demand, on a full indemnity basis, in respect of all losses, liabilities (whether in contract, tort or otherwise and whether arising at common law, in equity or by statute), costs, charges and expenses (including legal fees) which may be suffered or incurred by any of them (or by or against any agent, officer or employee for whose liability act or omission any of them

may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of:

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed;
- (b) anything occasioned by any breach by the Assignor of any of its obligations under this Deed; or
- (c) the enforcement or attempted enforcement, presentation or attempted presentation of any of the security by or pursuant to this Deed or of any of the Assigned Rights,

except in case of gross negligence or wilful misconduct.

- 9.3 All fees, costs and expenses payable under or in connection with this Deed must be paid together with an amount equal to any value added tax payable by the Bank in respect of the same.
- 9.4 Notwithstanding this Deed, the Bank shall not be under any obligation or liability to the Assignor or any other person by reason of this Deed or for anything done by the Bank pursuant to this Deed.
- 9.5 Notwithstanding this Deed, the Bank shall not be obliged:
 - (a) to assume or be under any obligation in any manner to perform or fulfil any obligation of the Assignor in relation to any of the Assigned Rights or any Contract and the Assignor remains liable to perform all of the obligations assumed by it under each such Contract;
 - (b) to enforce payment under or in respect of any of the Assigned Rights; or
 - (c) to make any enquiry as to the nature or sufficiency of any payment received by it under or pursuant to this Deed.

10 CONTINUING SECURITY AND OTHER MATTERS

- 10.1 This Deed shall be a continuing security notwithstanding any intermediate payment or settlement of account for the payment of the Secured Obligations or the appointment of a receiver or liquidator or similar person over the whole or part of the Assignor's property or the Assignor becoming insolvent, or any insolvency proceedings being initiated against the Assignor or any similar thing, or action being taken by the Assignor or other person, and shall remain in full force and effect unless and until discharged by the Bank.
- 10.2 This Assignment is in addition to, independent of and will not merge with or otherwise prejudice, any other right or remedy or any security now or hereafter held by or available to the Bank in connection with the Secured Obligations.
- 10.3 Any release, discharge or settlement between the Assignor and the Bank will be conditional upon no security, disposition or payment received by the Bank in respect

of the Secured Obligations being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Bank will be entitled to recover the value or amount of such security or payment from the Assignor subsequently as if such release, discharge or settlement had not occurred and any such security or payment had not been made.

- 10.4 The Bank shall not be obliged to resort to any other means of payment now or hereafter held by or available to it before enforcing this Deed and no action taken or omitted to be taken in connection with any other means of payment shall discharge, reduce, prejudice or affect the liability of the Assignor. The Bank shall not be obliged to account for any money or other property received in consequence of any enforcement or realisations of any other means of payment.
- 10.5 Neither the restriction on consolidation in the Law of Property Act 1925 section 93, nor section 103, nor section 109(8) of that Act shall apply to this Deed or the security created by it.
- 10.6 At any time after this Deed has become enforceable, the Bank may credit all moneys realised in respect of the Assigned Rights to an interest bearing suspense account held with the Bank. The Bank may hold those moneys in that account for so long as the bank thinks fit until the Secured Obligations have been discharged in full.
- 10.7 The Bank makes further advances available to the Assignor on the terms and subject to the conditions of the Agreement.

11 CURRENCIES

For the purpose, or pending the discharge, of any of the Secured Obligations, the Bank may convert any money received, recovered or realised or subject to application by the Bank under this Deed, including the proceeds of any previous conversion under this Clause 11, from their existing currency of denomination into such other currency as the Bank may think fit, and any such conversion shall be effected at the Bank's prevailing spot selling rate of exchange for such other currency against the existing currency.

12 MISCELLANEOUS

- 12.1 No failure or delay on the part of the Bank to exercise any power, right or remedy under this Deed will operate as a waiver thereof nor will any single or any partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy. The remedies provided in this Deed are cumulative and are not exclusive of any remedies provided by law. No waiver shall be effective or binding on the Bank unless given in writing by an authorised officer of the Bank.
- 12.2 The terms of this Deed may be amended only by an instrument in writing signed by an authorised officer of the Bank and by an authorised signatory on behalf of the Assignor.
- 12.3 Each of the provisions of this Deed is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or

unenforceable the validity, legality and enforceability of the remaining provisions of this Deed will not in any way be affected or impaired thereby.

- 12.4 Any change in the constitution of the Bank or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person will not in any way affect or prejudice its rights under this Deed.

13 SUCCESSORS AND ASSIGNS

- 13.1 This Deed shall be binding on the Assignor and its successors but the Assignor may not assign or transfer all or any of its rights or obligations under this Deed.
- 13.2 The Bank may assign all or any part of its rights or benefits under this Deed without the consent of the Assignor and, after assignment, relevant references in this Deed to the Bank, wherever used in this Deed, shall include any assignee of the Bank and every successor in title of any such assignee or of the Bank.
- 13.3 The Bank may disclose to a potential assignee or transferee or to any other person who may propose entering into contractual relations with the Bank in relation to this Deed such information about the Assignor as the Bank considers appropriate.

14 LIABILITY TO THIRD PARTIES

No term of this Deed shall be enforceable by any person who is not a party to it under the Contracts (Rights of Third Parties) Act 1999.

15 LAW AND JURISDICTION

- 15.1 This Deed (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in all respects in accordance with the laws of England.
- 15.2 Any dispute, controversy or claim arising out of or in connection with this Deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of Arbitration and Conciliation of the Arbitral Centre of the Austrian Federal Economic Chamber in Vienna. The tribunal shall consist of one arbitrator. The proceeding shall be held and the award rendered in Vienna. The language of the arbitration shall be English. Notwithstanding the above arbitration clause, each party may bring proceedings in respect of any such dispute before the Commercial Court of Vienna to whose jurisdiction the Assignor irrevocably submits.

IN WITNESS whereof this Deed has been entered into the day and year first above written.

**SCHEDULE 1
NOTICE OF ASSIGNMENT**

From: Allied Carbon Trading Ltd

To: [•Off-taker]

Cc: Raiffeisen Bank International AG

Date:

Dear Sirs

Deed of Assignment dated [•] May 2013 between Raiffeisen Bank International AG and Allied Carbon Trading Ltd ("Deed")

- 1 We refer to the [•sales contract] ("Contract").
- 2 We give you notice that pursuant to the Deed we have absolutely assigned to Raiffeisen Bank International AG all our rights, title and interest in all money payable by you to us under the Contract.
- 3 Notwithstanding such Deed, we remain liable to perform all our obligations under or in connection with the Contract and Raiffeisen Bank International AG shall have no liability whatsoever in respect thereof.
- 4 We hereby **irrevocably** instruct you to pay all money payable by you to us under or in connection with the Contract to our account at account number [REDACTED] with Raiffeisen Bank International AG.
- 5 Please ensure that we and Raiffeisen Bank International AG receive as soon as possible an acknowledgement in the attached form signed in duplicate by an authorised officer of yourselves.

.....
Allied Carbon Trading Ltd

Acknowledgement to the Notice of Assignment

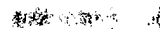
To: Allied Carbon Trading Ltd
Raiffeisen Bank International AG

Dear Sirs

1. We hereby acknowledge that we have received the Notice of Assignment dated [•].
2. We confirm that we have not received any prior notice of assignment in relation to the subject matter of it, and agree to pay any money payable by us to Allied Carbon Trading Ltd under or in connection with the Contract to the account and bank stated in the Notice of Assignment or as Raiffeisen Bank International AG shall from time to time instruct us in writing.

Date:

.....
[Off-taker]




EXECUTION PAGE

Executed as a deed by
Allied Carbon Trading Ltd

Acting by:


Director


In the presence of: 

Name of witness:

GRAHAM BONFIELD

Address:

Executed as a deed on behalf of
Raiffeisen Bank International AG


Thomas Schirmer
Head of Commodity
and Structured Trade Finance


Andreas Kettlgruber