# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

## CURRENT REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported): November 15, 2007

## Dynamic Materials Corporation

(Exact Name of Registrant as Specified in its Charter)

Delaware (State or Other Jurisdiction of Incorporation) **0-8328** (Commission File Number)

84-0608431

(I.R.S. Employer Identification No.)

5405 Spine Road Boulder, Colorado 80301

(Address of Principal Executive Offices, Including Zip Code)

(303) 665-5700

(Registrant's Telephone Number, Including Area Code)

Check t	the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:
	Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
	Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
	Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

□ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

## Item 1.01 Entry into a Material Definitive Agreement.

#### DYNAenergetics Purchase Agreement

On November 15, 2007, Dynamic Materials Corporation, a Delaware corporation (the "Company") entered into a Purchase, Sale and Assignment Agreement (the "Purchase Agreement") with DYNAenergetics Holding GmbH, a German limited liability company and wholly-owned subsidiary of the Company (the "Purchaser"), Rolf Rospek, Patrick Xylander, Uwe Gessel, OaG Beteiligungs-GmbH, a German limited liability company (collectively the "Sellers") and Volker Mertens. As further described in Item 2.01, pursuant to the Purchase Agreement, the Company puchased DYNAenergetics, a German-based manufacturer of explosion-welded clad metal plates and oil-field explosives and related hardware. The Purchase Agreement contains customary representations, warranties and covenants, including, among other things, customary indemnification and non-competition obligations from the Sellers.

This summary of the terms of the Purchase Agreement is qualified in its entirety by reference to the agreement which is filed as Exhibit 10.1 to this report.

## Credit Agreement

On November 16, 2007, the Company and its wholly owned subsidiary, Dynamic Materials Luxembourg 2 S.à r.l. ("LuxCo"), entered into dollar and euro term and revolving credit facilities with a syndicate of banks led by JPMorgan Chase Bank, N.A. (the "Credit Agreement"). The outstanding principal amounts of the term loans are \$45,000,000 and  $\epsilon$ 14,000,000. The maximum revolving loan commitments are \$25,000,000 and  $\epsilon$ 7,000,000, 50% of which are currently available and no amounts of which are outstanding as of November 19, 2007. The Company expects the full amount of the revolving loan commitments to become available within 30 days following completion of the German registration formalities regarding the DYNAenergetics acquisition.

The proceeds of the loans were used to fund a portion of the cash purchase price under the Purchase Agreement and to pay transaction costs. The initial interest rate on the dollar and euro loans was 6.34% and 5.889%, respectively.

The Credit Agreement contains various representations, warranties and affirmative, negative and financial covenants customary for credit facilities of this type. The negative covenants limit dividends and other restricted payments, liens, acquisitions, disposals, indebtedness, investments, and capital expenditures. The financial covenants include a maximum leverage ratio and a minimum fixed charge coverage ratio. The Credit Agreement also includes events of default customary for credit facilities of this type.

The credit facilities are supported by a pledge of substantially all the assets of the Company and guarantees and share pledges by certain of its subsidiaries.

In connection with the Credit Agreement, on November 16, 2007, the Company and LuxCo entered into a letter agreement with JPMorgan Chase Bank, N.A. (the "Letter Agreement"), pursuant to which the Company and LuxCo agreed to satisfy certain post-closing conditions. The Company has 60 to 120 days to satisfy the remaining conditions, and it expects

to satisfy such conditions within such timeframe. Failure by the Company and LuxCo to satisfy such conditions constitute an event of default under the Credit Agreement.

This summary of the terms of the Credit Agreement and the Letter Agreement is qualified in its entirety by reference to the agreements which are filed as Exhibit 10.2 and Exhibit 10.3 to this report.

The information in Item 2.01 of this report is incorporated into this Item 1.01 by reference.

#### Item 2.01 Completion of Acquisition or Disposition of Assets.

On November 15, 2007, pursuant to the terms of the Purchase Agreement, the Purchaser purchased all of the issued and outstanding shares of DYNAenergetics Beteiligungs-GmbH and all of the interests in DYNAenergetics GmbH & Co. KG (collectively, "DYNAenergetics") from the Sellers for approximately \$93 million. The purchase price was paid by & 54,322,250 (approximately \$79,690,740) in cash and a total of 251,041 shares of common stock of the Company.

DYNAenergetics operates two business units: DYNAPLAT and DYNAWELL. DYNAPLAT is an explosion welding company operating manufacturing facilities in Germany. The DYNAWELL division utilizes both explosive and metalworking technologies to manufacture a wide range of proprietary and non-proprietary products for the global oil field production and decommissioning industries. DYNAWELL also distributes a line of seismic products that support oil and gas exploration activities.

Prior to the transaction, there were no material relationships between the Sellers, on the one hand, and the Company or any of its affiliates, directors, officers, or any associate of such directors or officers, on the other hand.

### Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information in Item 1.01 of this report is incorporated into this Item 2.03 by reference.

#### Item 3.02 Unregistered Sales of Equity Securities.

As partial consideration for the acquisition of DYNAenergetics and pursuant to the Purchase Agreement, on November 15, 2007, the Company issued 251,041 shares of Company common stock to the Sellers. The issuance of the Company common stock is exempt from registration under the Securities Act pursuant to Section 4(2) of the Securities Act of 1933, as amended, and/or Regulation D promulgated thereunder, as a transaction not involving a public offering.

The information in Item 1.01 and Item 2.01 of this report is incorporated into this Item 3.02 by reference.

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## Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

In connection with the Purchase Agreement, DYNAenergetics entered into a three year managing director agreement (with the term commencing on the closing date) with Rolf Rospek to serve as Managing Director, effective as of November 15, 2007 (the "Managing Director Agreement"). Pursuant to the Managing Director Agreement, Mr. Rospek will be entitled to receive an annual gross base salary of  $\in$  169,543 and an annual performance bonus of at least  $\in$  42,400. Mr. Rospek, age 49, has served as Managing Director of DYNAenergetics Beteiligungs-GmbH since September 2001. He has 27 years of industry experience.

Concurrent with the closing of the Purchase Agreement, Mr. Rospek was also appointed as a director of the Company, effective as of November 16, 2007.

This summary of the terms of the Managing Director Agreement is qualified in its entirety by reference to the agreement which is filed as Exhibit 10.4 to this report.

### Item 8.01 Other Events.

On November 16, 2007, the Company issued a press release announcing the acquisition under the Purchase Agreement. A copy of the press release is filed as Exhibit 99.1 and incorporated herein by reference (including, without limitation, the cautionary statements contained in the press release).

## Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired.

The financial statements required by this Item 9.01(a) will be filed by amendment hereto no later than 71 days after the date this report is to be filed.

(b) Pro Forma Financial Information.

The pro forma financial information required by this Item 9.01(b) will be filed by amendment hereto no later than 71 days after the date this report is to be filed.

(d) Exhibits.

Exhibit Number	Description			
10.1	Purchase, Sale and Assignment Agreement dated November 15, 2007, by and among the Company, DYNAenergetics Holding GmbH, Rolf Rospek, Patrick Xylander, Uwe Gessel, OaG Beteiligungs-GmbH and Volker Mertens.			
10.2	Credit Agreement dated November 16, 2007, by and among the Company, Dynamic Materials Luxembourg 2 Sàrl, the guarantors party thereto, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent for the revolving loan and the term loan, J.P. Morgan Europe Limited, as administrative agent for the euro term loan and JPMorgan Securities Inc., as sole bookrunner and lead arranger.			
10.3	Letter dated November 16, 2007, by and among the Company, Dynamic Materials Luxembourg 2 Sàrl and JPMorgan Chase Bank, N.A.			
10.4	Managing Director Agreement dated November 15, 2007, between Dynaenergetics Beteiligungs-GmbH and Rolf Rospek.			

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

## DYNAMIC MATERIALS CORPORATION

Dated: November 19, 2007

By: /s/ Richard A. Santa

Richard A. Santa

Vice President and Chief Financial Officer

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## EXHIBIT INDEX

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10.4	Managing Director Agreement dated November 15, 2007, between Dynaenergetics Beteiligungs-GmbH and Rolf Rospek.		
99.1	Press Release dated November 16, 2007.		
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#### PURCHASE, SALE AND ASSIGNMENT AGREEMENT

#### dated November 15, 2007

Among the Sellers named herein,

Blitz F07-dreihundert-vierzehn GmbH (in future: DYNAenergetics Holding GmbH) as Purchaser,

and

#### **Dynamic Materials Corporation**

for the purchase of all of the shares of

#### DYNAENERGETICS BETEILIGUNGS-GMBH

#### and interests in

#### DYNAENERGETICS GMBH & CO. KG

[The Agreement was executed by notarial deed executed by the parties to the Agreement and Stephen Cueni, Notary Public, in Basel Switzerland on 15 November 2007. The notarial deed has been omitted.]

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#### PURCHASE, SALE AND ASSIGNMENT AGREEMENT

This Purchase, Sale and Assignment Agreement (this "Agreement") dated as of November 15, 2007, is among Mr. Rolf Rospek ('Seller 1''); Dr. Uwe Gessel ("Seller 2"); Mr. Patrick Xylander ("Seller 3") and OaG Beteiligungs-GmbH, a German limited liability company ("Seller 4" and together with Seller 1, Seller 2 and Seller 3, the "Sellers" and each a "Seller"); Mr. Volker Mertens ("Mr. Mertens"); Blitz F07-dreihundert-vierzehn GmbH (in future: DYNAenergetics Holding GmbH), a German limited liability company (the "Purchaser"); and Dynamic Materials Corporation, a Delaware, U.S.A., corporation ("Dynamic Materials").

#### Recitals

1. DYNAenergetics GmbH & Co. KG (the 'Company') is a limited partnership with a limited liability company as general partner organized under the laws of Germany with registered offices at Troisdorf and registered with the Commercial Register of the Lower Court (*Amtsgericht*) at Siegburg under HRA 3522. The capital interest (*Hafikapital und Festkapital*) of the Company amounts to EUR 400,000 (Euro four hundred thousand) (the 'Limited Partnership Capital Interest'). The interests in

the Company are held by the sole general partner DYNAenergetics Beteiligungs GmbH ("DYNA GmbH"), which has no Limited Partnership Capital Interest in the Company, and by each of the Sellers as follows:

- i) A limited interest (Kommanditanteil) with a part of the Limited Partnership Capital Interest (Kapitalanteil) and a registered capital contribution (Hafteinlage) each in the amount of EUR 108,000 (Euro one hundred eight thousand) ("KG-Interest 1") is held by Seller 1.
- ii) A limited interest (*Kommanditanteil*) with a part of the Limited Partnership Capital Interest (*Kapitalanteil*) and a registered capital contribution (*Hafteinlage*) each in the amount of EUR 108,000 (Euro one hundred eight thousand) ("**KG-Interest 2**") is held by Seller 2.
- iii) A limited interest (Kommanditanteil) with a part of the Limited Partnership Capital Interest (Kapitalanteil) and a registered capital contribution (Hafteinlage) each in the amount of EUR 72,000 (Euro seventy-two thousand) ("KG-Interest 3") is held by Seller 3.
- iv) A limited interest (Kommanditanteil) with a part of the Limited Partnership Capital Interest (Kapitalanteil) and a registered capital contribution (Hafteinlage) each in the amount of EUR 112,000 (Euro one hundred twelve thousand) ("KG-Interest 4"; the KG-Interest 1, the KG-Interest 2, the KG-Interest 3 and the KG-Interest 4 are collectively referred to as the "KG-Interests") is held by Seller 4.
- 2. The Sellers are parties as lender of the following loans (which comprise profits of the Company that have not been distributed as of the Calculation Date):
  - i) Seller 1 granted a loan to the Company that has a nominal value of at least EUR 1,302,535.52 (Euro one million three hundred two thousand five hundred thirty-five and 52/00) as of the date of this Agreement ("Partner Loan Claim 1").
  - ii) Seller 2 granted a loan to the Company that has a nominal value of at least EUR 1,304,869.67 (Euro one million three hundred four thousand eight hundred sixty-nine and 67/00) as of the date of this Agreement ("Partner Loan Claim 2").
  - iii) Seller 3 granted a loan to the Company that has a nominal value of at least EUR 886,558.48 (Euro eight hundred eighty-six thousand five hundred fifty-eight and 48/00) as of the date of this Agreement ("Partner Loan Claim 3").
  - iv) Seller 4 granted a loan to the Company that has a nominal value of at least EUR 1,383,292.42 (Euro one million three hundred eighty-three thousand two hundred ninety-two and 42/00) as of the date of this Agreement ("Partner Loan Claim 4"; Partner Loan Claim 1, Partner Loan Claim 2, Partner Loan Claim 3 and Partner Loan Claim 4 are collectively referred to as the "Partners' Loan Claims").
- 3. DYNA GmbH, the sole general partner of the Company, is a limited liability company (Gesellschaft mit beschränkter Haftung) organized under the laws of Germany with registered offices at Troisdorf and registered with the Commercial Register of the Lower Court (Amtsgericht) at Siegburg under HRB 6271. The Registered Share Capital (Stammkapital) of DYNA GmbH amounts to EUR 25,000 (Euro twenty-five thousand) (the 'Registered Share Capital'). The Registered Share Capital is divided into the following shares held by the Sellers as follows:

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- i) One share with a par value (Nennbetrag) of EUR 6,750 (Euro six thousand seven hundred fifty) ("GmbH-Share 1") is held by Seller 1.
- ii) One share with a par value (Nennbetrag) of EUR 6,750 (Euro six thousand seven hundred fifty) ("GmbH-Share 2") is held by Seller 2.
- iii) One share with a par value (Nennbetrag) of EUR 4,500 (Euro four thousand five hundred) ("GmbH-Share 3") is held by Seller 3.
- iv) One share with a par value (*Nennbetrag*) of EUR 7,000 (Euro seven thousand) (**'GmbH-Share 4**"; the GmbH-Share 1, the GmbH-Share 2, the GmbH-Share 3 and the GmbH-Share 4 are collectively referred to as the **'GmbH-Shares**") is held by Seller 4.
- 4. The Sellers are parties as lender of the following loans (which comprise profits of DYNA GmbH that have not been distributed as of the Calculation Date):
  - i) Seller 1 granted a loan to DYNA GmbH that has a nominal value of at least EUR 18,762.51 (Euro eighteen thousand seven hundred sixty-two and 51/00) as of the date of this Agreement ("Shareholder Loan Claim 1").
  - ii) Seller 2 granted a loan to DYNA GmbH that has a nominal value of at least EUR 18,762.51 (Euro eighteen thousand seven hundred sixty-two and 51/00) as of the date of this Agreement ("Shareholder Loan Claim 2").
  - iii) Seller 3 granted a loan to DYNA GmbH that has a nominal value of at least EUR 12,508.34 (Euro twelve thousand five hundred eight and 34/00) as of the date of this Agreement ("Shareholder Loan Claim 3").
  - iv) Seller 4 granted a loan to DYNA GmbH that has a nominal value of at least EUR 19,457.42 (Euro nineteen thousand four hundred fifty-seven and 42/00) as of the date of this Agreement ("Shareholder Loan Claim 4"; Shareholder Loan Claim 1, Shareholder Loan Claim 2, Shareholder Loan Claim 3 and Shareholder Loan Claim 4 are collectively referred to as the "Shareholders" Loan Claims").
- 5. The Company and DYNA GmbH have the following subsidiaries:
- **5.1** The Company holds the following participations:

- i) 55% of the registered share capital of OOO DYNAenergetics RUS, having its registered offices in the Russian Federation, 115230, Moscow, Varshavskoye chaussée, 36, building 8, 2nd floor, being registered with Inspectorate No. 26 of the Ministry of the Russian Federation for Taxes and Duties for the Southern Administrative district for the City of Moscow under OGRN 1037727047797 and having an aggregate share capital of RUR 1,200,000 (Rouble one million two hundred thousand) ("DYNAenergetics RUS");
- ii) 14% (one share with a par value (*Nennbetrag*) of EUR 3,500 (Euro three thousand five hundred)) of the registered share capital of Troisdorf Genehmigungshaltergesellschaft mbH, having its registered offices in Troisdorf, being registered with the Commercial Register of the Lower Court (*Amtsgericht*) at Siegburg under HRB 6200 and having an aggregate share capital of EUR 25,000 (Euro twenty-five thousand) ('**Troisdorf GHG**'); and

- iii) 16% (one share with a par value (*Nennbetrag*) of EUR 4,000 (Euro four thousand)) of the registered share capital of Würgendorf Genehmigungshaltergesellschaft mbH, having its registered offices in Burbach-Würgendorf, being registered with the Commercial Register of the Lower Court (*Amtsgericht*) at Siegen under HRB 5466 and having an aggregate share capital of EUR 25,000 (Euro twenty-five thousand) ("Würgendorf GHG").
- 5.2 DYNA GmbH holds the following participations:
  - 53.5% of the registered share capital of OOO Perfoline, having its registered offices in the Russian Federation, 625017, Tyumen' oblast, Tyumen', ul. Yanskaya, 105, being registered with Inspectorate No. 3 of the Federal Tax Service of the Russian Federation for the City of Tyumen' under OGRN 1067203320975 and having an aggregate share capital of RUR 10,000,000 (Rouble ten million) ("Perfoline");
  - ii) 60% of the registered share capital of KOO KAZ DYNAenergetics, having its registered offices in Republic of Kazakhstan, Atyrau, Kantseva str., 7, 9-th office, being registered with the Ministry of Justice of Republic of Kazakhstan under file no. 7899-1915-LLP (FP) and having an aggregate share capital of 2,366,600 KZT (Kazakhstan, Tenge two million three hundred sixty-six thousand six hundred) (about USD 19,558) (**'KAZ DYNAenergetics''**);

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- 51% of the registered share capital of 4391438 Canada Ltd., having its registered offices in the City of Edmonton, in the Province of Alberta, being registered with Corporations Canada of Industry Canada under file no. 439143-8 and having an aggregate share capital of CAD 1,000 (Canada, Dollars one thousand) ("4391438 Canada"); and
- iv) 49% of the registered share capital of 1306735 Alberta Ltd., having its registered offices in the City of Edmonton, in the Province of Alberta, being registered with the Registrar of Corporations of Alberta under file no. 2013067356 and having an aggregate share capital of CAD 1,000 (Canada, Dollars one thousand) ("1306735 Alberta").

(DYNAenergetics RUS, Troisdorf GHG, Würgendorf GHG, Perfoline, KAZ DYNAenergetics, 4391438 Canada and 1306735 Alberta are collectively also referred to as the "Subsidiaries" and each of them as a "Subsidiary". The Company, DYNA GmbH and the Subsidiaries are collectively referred to as the "DYNA Group" or "DYNA Group Companies" and each of such companies hereinafter a "DYNA Group Company". DYNAenergetics RUS, Perfoline, KAZ DYNAenergetics, 4391438 Canada and 1306735 Alberta are collectively also referred to as the "Operating Subsidiaries" and each of them as an "Operating Subsidiary". The interests and shares in the Company, DYNA GmbH and their Subsidiaries are collectively also referred to as the "Companies' Shares".)

- 6. The DYNA Group manufactures, distributes and sells (i) explosion-weld-clad metals and (ii) explosives and associated hardware for the international oil field, seismic prospecting, and decommissioning businesses, including related training and seminars for these areas world wide (the "Business").
- 7. Purchaser is an indirect wholly owned subsidiary of Dynamic Materials.
- 8. The Sellers desire to sell to the Purchaser, and the Purchaser desires to purchase from the Sellers, all of their KG-Interests in the Company, all of their GmbH-Shares in DYNA GmbH, the Partners' Loan Claims and the Shareholders' Loan Claims pursuant to the terms and conditions of this Agreement.

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NOW, THEREFORE, the Parties hereto agree as follows:

Agreement

Sec. 1.

#### **DEFINED TERMS**

Capitalized terms used herein shall have the meaning ascribed to them in Annex 1.

Sec. 2.

## SALE, PURCHASE AND ASSIGNMENT

## 2.1 Sale and Purchase of KG-Interests, GmbH-Shares, Partners' Loan Claims and Shareholders' Loan Claims; Right to Profits

Each Seller hereby agrees to sell, and the Purchaser hereby agrees to purchase, upon the terms and conditions of this Agreement, the KG-Interests and the GmbH-Shares held by the individual Sellers. The KG-Interests and the GmbH-Shares are sold to the Purchaser with all rights and obligations pertaining thereto with economic effect (schuldrechtlicher Wirkung) as from 1 October 2007, 0:00 hours CEST (the 'Contractual Effective Date' - wirtschaftlicher Stichtag). All profits and losses of the Company and DYNA GmbH shall pertain to the Purchaser other than preliminary distributions (Vorabentnahmen) and additional payments in an aggregate amount of up to EUR 5,989,092.52 (Euro five million nine hundred eighty-nine thousand ninety-two and 52/00) for the business year ended on the Calculation Date that have already been paid from the Company to the Sellers. For the avoidance of doubt, the parties agree, that any claims of Sellers 1 through 3, resulting from their service agreements as managing directors of the Company (Geschäftsführer-Anstellungsverträge), dating of 7 September 2001, especially claims on a bonus and on payment of VAT, are not sold and assigned, but stay in the ownership of the respective Seller.

Each Seller hereby agrees to sell, and the Purchaser hereby agrees to purchase, upon the terms and conditions of this Agreement, the Partners' Loan Claims and Shareholders' Loan Claims belonging to such individual Seller.

- 2.2 Assignment of the KG-Interests, GmbH-Shares, Partners' Loan Claims and Shareholders' Loan Claims
- 2.2.1. Seller 1 hereby assigns (abtreten) to the Purchaser (i) the KG-Interest 1, (ii) the GmbH-Share 1, (iii) Partner Loan Claim 1 and (iv) Shareholder Loan Claim 1.
- 2.2.2. Seller 2 hereby assigns (abtreten) to the Purchaser (i) the KG-Interest 2, (ii) the GmbH-

- 2.2.3. Seller 3 hereby assigns (abtreten) to the Purchaser (i) the KG-Interest 3, (ii) the GmbH-Share 3, (iii) Partner Loan Claim 3 and (iv) Shareholder Loan Claim 3.
- 2.2.4. Seller 4 hereby assigns (*abtreten*) to the Purchaser (i) the KG-Interest 4, (ii) the GmbH-Share 4, (iii) Partner Loan Claim 4 and (iv) Shareholder Loan Claim 4 (the assignments pursuant to Sections 2.2.1 through and including 2.2.4 the "Assignments").
- **2.2.5.** The Purchaser hereby accepts the Assignments from the Sellers.
- 2.2.6. The Assignments are subject to the condition precedent (aufschiebende Bedingung) of the payment of the Closing Payments to the Sellers pursuant to Section 3.1.2 and deposited to the Hold Back in full pursuant to Section 3.1.3. The Sellers shall confirm in writing vis-à-vis the Purchaser the receipt of the Purchase Price in full promptly after its receipt on Execution Date with a confirmation letter substantially in the form enclosed as Annex 2.2.6.
- 2.2.7. The assignment of the KG-Interests and the GmbH-Shares is in addition subject to the condition precedent (aufschiebende Bedingung) that the Purchaser is registered with the commercial register of the Company as limited partner by virtue of a special succession (Sonderrechtsnachfolge). The Purchaser is solely entitled to waiver of the condition precedent of this Section 2.2.7 at any time by Notice or notification by fax or e-mail to the Sellers.

#### 2.3 Consent to the Sale and Purchase of the KG-Interests and the GmbH-Shares

The Company (internally by way of an unanimously passed partners' resolution) has agreed to the sale, purchase and assignment of each of the KG-Interests and the Partners' Loan Claims. A copy of such agreement including a copy of the partners' resolution are attached as <u>Annex 2.3-1</u> for identification purposes.

DYNA GmbH (internally by way of an unanimously passed shareholders' resolution) has agreed to the sale, purchase and assignment of each of the GmbH-Shares. A copy of such agreement including a copy of the shareholders' resolution are attached as <u>Annex 2.3-2</u> for identification purposes.

Each of the Sellers hereby also waives any option or pre-emption right he or it may have with regard to the KG-Interests and/or the GmbH-Shares and/or the Partners' Loan Claims and/or the Shareholders' Loan Claims. The Purchaser hereby accepts such waivers.

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#### Sec. 3.

#### PURCHASE PRICE; PAYMENT

#### 3.1 Purchase Price

3.1.1. The purchase price (the "Purchase Price") for the KG-Interests, the GmbH-Shares, the Partners' Loan Claims and the Shareholders' Loan Claims shall be an amount equal to EUR 65,850,000 (Euro sixty-five million eight hundred fifty thousand) allocated among the Sellers as follows:

Seller 1	EUR 17,779,500
Seller 2	EUR 17,779,500
Seller 3	EUR 11,853,000
Seller A	FUR 18 438 000

- 3.1.2. At Closing the Sellers shall receive from or on behalf of the Purchaser the payments as follows (the 'Closing Payments'):
  - (i) Purchaser shall deliver a total of 251,041 (two hundred fifty-one thousand and forty-one) shares of common stock, par value \$.05 per share, of Dynamic Materials ("DMC Common Stock") to the Sellers (the "Stock Consideration") as set forth on Annex 3.1.2. Part of the Stock Consideration will be delivered into escrow pursuant to Section 3.1.3.
  - (ii) Purchaser shall pay to the Sellers an aggregate amount of cash equal to EUR 54,322,250 (Euro fifty-four million three hundred twenty-two thousand two hundred fifty) as set forth on Annex 3.1.2, which is EUR 56,852,250 (Euro fifty-six million eight hundred fifty-two thousand two hundred and fifty) less the amount of the Preliminary Business Tax Amount.
- 3.1.3. At Closing, 185,956 (one hundred eighty-five thousand nine hundred fifty-six) shares of DMC Common Stock, which is a portion of the Stock Consideration equal to EUR 6,665,000 (Euro six million six hundred sixty-five thousand) ("Hold Back"), shall be delivered to an escrow account in accordance with an escrow agreement to be entered into among Sellers, the Purchaser, and the escrow agent named therein, substantially in the form attached as <a href="Annex 3.1.3">Annex 3.1.3</a> (the "Escrow Agreement"). As further described in, and pursuant to the terms of, the Escrow Agreement, the Hold Back amount shall be released by delivery to the Sellers, on the date that is eighteen

- (18) months after the Closing Date; however, this only applies if and to the extent no claims under Sections 5 through 7 and Section 9 hereof have been asserted by the Purchaser until the due date. If and to the extent claims under Sections 5 through 7 hereof have been asserted by the Purchaser until the due date, the Hold Back shall be used to secure such claims and any amount still in the Hold Back shall only be released to the Sellers after full and final satisfaction or waiver of any such claims of the Purchaser. The Purchaser shall be required to make use of the Hold Back to satisfy its claims under this Agreement to the extent any of the Hold Back still exists and is sufficient therefor.
- 3.1.4. Pursuant to the terms of the Escrow Agreement, the parties are obliged to give joint instructions to the escrow agent under the Escrow Agreement to deliver the Hold Back, including any related cash in such escrow account to the Sellers:
  - (i) eighteen (18) months after the Closing Date to the Sellers, if and to the extent no claims under any of Sections 5-7 and Section 9 have been asserted by the purchaser until the due date; or
  - (ii) in case and to the extent that claims under any of Sections 5-7 and Section 9 have been asserted promptly after the parties have resolved such claims or after a court order, which is final and non appealable has rejected such claims.
- 3.1.5. If the escrow agent under the Escrow Agreement resigns or is discharged before the Hold Back is released, the parties are obliged to give joint instructions to the escrow agent to deliver upon its resignation or discharge the Hold Back including any related cash (i) to a new escrow agent, the parties have jointly agreed upon; or (ii) if the parties have not agreed upon a new escrow agent, to the parties to hold in joint ownership.

#### 3.2 Vesting of the Stock Consideration

The shares of DMC Common Stock received as Stock Consideration, including any shares of DMC Common Stock released to the Sellers from the Hold Back, may not be sold, assigned, transferred (by gift or otherwise), conveyed, pledged or otherwise disposed of (the "Transfer Restrictions") prior to the fifth anniversary of the Closing Date. The stock certificates evidencing the Stock Consideration will be marked with a legend to such effect. Upon the receipt by Dynamic Materials of notice of a scheduled delisting of its common stock from the exchange on which it is listed, Dynamic Materials shall promptly notify the Sellers and the Transfer Restrictions shall terminate.

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#### 3.3 Dynamic Materials Common Stock

Dynamic Materials guarantees that the DMC Common Stock delivered as the Stock Consideration is duly authorized, validly issued, fully paid and non-assessable.

#### Sec. 4.

#### **SELLERS' GUARANTIES**

The Sellers hereby, as partial debtors (*Teilschuldner*) according to the percentage set forth on Annex 5.1, guarantee to the Purchaser by way of an independent promise of guaranty pursuant to Sec. 311 Para. 1 of the German Civil Code (*selbständiges Garantieversprechen im Sinne des § 311 Abs. 1 BGB*) within the scope of, and subject to the requirements and limitations provided in Section 4 or otherwise in this Agreement, including the disclosure schedules (which will be arrangedin Annexes, schedules and sections corresponding to the lettered and numbered sections contained in this Section 4) that the statements set forth in this Section 4 are true, correct and complete as of the Closing Date. The Sellers and the Purchaser agree and explicitly confirm that the guaranties in this Section 4 are not granted, and shall not be qualified and construed as, quality guaranties concerning the object of the purchase (*Garantien für die Beschaffenheit der Sachā*) within the meaning of Sec. 443, 444 of the German Civil Code, respectively, that Sec. 444 of the German Civil Code shall not and does not apply to the guaranties contained in this Section 4.

For the purpose of this Agreement the Sellers shall be deemed to have 'Sellers' Knowledge' of a particular fact or other matter if (i) there exists the actual knowledge (positive Kenntnis) of any of Seller 1, Seller 2, Seller 3 or Mr. Mertens of such particular fact or other matter as of the relevant date or (ii) any of Seller 1, Seller 2, Seller 3 or Mr. Mertens could have had knowledge of such fact or other matter after due inquiry in accordance with their duties as a prudent businessman pursuant to Sec. 43 Para. 1 German Limited Liability Companies Act.

#### 4.1 Authorization of Sellers

- **4.1.1.** The execution, delivery and performance by each of the Sellers of this Agreement and the other documents contemplated hereby (the "**Transaction Documents**") to which any Seller is or will become party and the consummation of each of the transactions contemplated hereby (the "**Contemplated Transactions**"):
  - (i) are within Seller 4's full corporate right, power and authority;

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- (ii) do not violate the articles of association, bylaws or equivalent organizational documents of Seller 4 or any of the DYNA Group Companies; and
- (iii) have been duly authorized by all necessary corporate action on the part of Seller 4 and the DYNA Group Companies.
- **4.1.2.** The execution, delivery and performance by each of the Sellers of this Agreement and the other Transaction Documents by each of the Sellers to which any such Seller is or will become party require no approval by any creditor, court or other governmental authority, or any other person whose authority is binding on such Seller.
- 4.1.3. As of the date hereof, there is no Proceeding pending or, to the Sellers' Knowledge, threatened against any Seller before any court, arbitrator or other governmental authority that in any manner challenges or seeks to prevent, alter or materially delay the transaction contemplated by this Agreement.

## 4.2 Legal Organization of Seller 4

**4.2.1.** Seller 4 is a limited liability company duly established and validly existing under the laws of Germany and has its actual center of administration in Germany. Seller 4 has all requisite limited liability company power and authority to perform all its obligations under the Transaction Documents to which it is a party or by which it is bound.

## 4.3 Legal Organization of the DYNA Group Companies

- 4.3.1. Each of the DYNA Group Companies has been duly established and is validly existing under the applicable Legal Requirements of their respective jurisdictions.
- **4.3.2.** Each of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary is duly qualified or licensed to conduct their respective businesses as and in each jurisdiction where presently conducted.
- 4.3.3. Annex 4.3.3-1 contains for identification purposes copies of the articles of association (or equivalent documents) of each of the DYNA Group Companies, which are in force and effect and no resolution for the amendment of the articles of association of any of the DYNA Group Companies have been adopted, and no filing with the respective registers for the amendment of the articles of association of any of the DYNA Group Companies is pending. Annex 4.3.3-2 contains for identification purposes copies of the current excerpts of the competent commercial registers of each of the DYNA Group

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- Companies. These copies of the excerpts of the commercial registers reflect the current situation of each of the DYNA Group Companies completely and correctly with respect to the subject matter covered thereby.
- 4.3.4. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is a party to any agreement that would permit any third party (other than any entity of the DYNA Group) to control such DYNA Group Company or obligate it to transfer all of its profits or parts of it to any such third party.

#### 4.4 Solvency of the Sellers and the DYNA Group Companies

- **4.4.1.** No bankruptcy or insolvency Proceedings are pending or have been applied for with respect to the Sellers or any of the DYNA Group Companies. No circumstances exist that would require the application for any bankruptcy or insolvency Proceedings with respect to any Seller or any of the DYNA Group Companies, in particular none of the Sellers or any of the DYNA Group Companies is over-indebted (*überschuldet*) or insolvent (*zahlungsunfähig*) in the meaning of the respective insolvency codes of the relevant jurisdictions nor to Sellers' Knowledge are there existing circumstances that would cause Sellers to believe they are impending (*drohen*).
- 4.4.2. None of the Sellers or any of the Company, the DYNA GmbH or, to the Sellers' Knowledge, any of the Operating Subsidiaries has, or will have, as of Closing Date, ceased or suspended payments (*Zahlungen eingestellt*), and no debt settlement arrangement with respect to any of the Sellers or the Company, the DYNA GmbH or, to the Sellers' Knowledge, any of the Operating Subsidiaries, or other compromise or arrangement between any of the Sellers or the Company, the DYNA GmbH or, to the Sellers' Knowledge, any of the Operating Subsidiaries, on the one hand, and any of their respective creditors, on the other hand, has been proposed or approved or will have been proposed or approved as of Closing Date.
- 4.5 Partners' Loan Claims / Shareholders' Loan Claims / Ownership in Shares / Interests; Shareholdings
- 4.5.1. Annex 4.5.1-1 sets forth the nominal value of each of the Partners' Loan Claims and Shareholders' Loan Claims with respect to, each of the Company and DYNA GmbH as of the date of this Agreement except for losses occurred since Calculation Date. Annex 4.5.1-2 sets forth the nominal value of each intercompany loan between any of the DYNA Group Companies as of Calculation Date.

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- 4.5.2. Seller 1 is the sole and unrestricted owner of the GmbH-Share 1, the KG-Interest 1, Partner Loan Claim 1 and Shareholder Loan Claim 1.
- 4.5.3. Seller 2 is the sole and unrestricted owner of the GmbH-Share 2, the KG-Interest 2, Partner Loan Claim 2 and Shareholder Loan Claim 2.
- 4.5.4. Seller 3 is the sole and unrestricted owner of the GmbH-Share 3, the KG-Interest 3, Partner Loan Claim 3 and Shareholder Loan Claim 3.
- 4.5.5. Seller 4 is the sole and unrestricted owner of the GmbH-Share 4, the KG-Interest 4, Partner Loan Claim 4 and Shareholder Loan Claim 4.
- **4.5.6.** Each of the shares held by the DYNA Group Companies in the Subsidiaries is duly authorized, validly issued and fully paid in, either in cash or in kind, has not been repaid (whether openly or in any concealed manner that would be deemed to be a repayment under applicable Legal Requirements) and is not subject to any contribution obligation (*Nachschusspflicht*), except as set forth on <u>Annex 4.5.6</u>.
- **4.5.7.** Each of the Companies Shares is free and clear of any Liens, restrictions on transfer or other rights of third parties, and there are no pre-emptive rights, rights of first refusal, options or other rights of any third party to purchase or acquire any of the Companies Shares. Sellers shall specifically indemnify Purchaser for any adverse consequences suffered by Purchaser as a result of any failure of the founders or shareholders of DYNAenergetics RUS or Perfoline to comply with the Family Code or antitrust notification provisions of the Civil Code of the Russian Federation.
- **4.5.8.** The statements made in the Recitals concerning the DYNA Group Companies are true, correct and complete.
- 4.5.9. Other than their respective participation in the Subsidiaries, neither the Company nor DYNA GmbH holds either directly, indirectly or in trust any shares, partnership interests or other equity interests (including, without limitation, silent partnerships and sub-participations) in, or have entered into any agreement to hold any shares, partnership interests or other equity interests in or to establish, or have any rights to acquire the foregoing in (collectively, "Interests"), any other entity. To the Sellers' Knowledge, this applies respectively to the Subsidiaries.
- 4.5.10. There are no outstanding options, warrants, calls, subscriptions or other rights, agreements or commitments obligating any of the Company, DYNA GmbH and, to

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- Sellers' Knowledge, each Operating Subsidiary to redeem, issue, transfer or sell any Interests in suchDYNA Group Company.
- **4.5.11.** Other than pursuant to this Agreement, no person has any pre-emptive rights, rights of first refusal, options, or other rights, whether conditioned or otherwise restricted in its exercisability, with respect to the Companies Shares.
- **4.5.12.** No dividend or other distribution in respect of any of the Companies Shares or the Partners' Loan Claims or the Shareholders' Loan Claims has been declared that remains unpaid other than dividends owed to the Sellers, which amounts will continue to remain in the Company or DYNA GmbH after completion of the Contemplated Transaction.
- **4.5.13.** Immediately following the consummation of the Contemplated Transactions, Purchaser will acquire the entire ownership of the Company and DYNA GmbH and will have good and marketable title to the KG-Interests and GmbH-Shares, free and clear of any Liens and possess all rights with respect thereto.

## 4.6 Financial Statements and Liabilities

- 4.6.1. The annual audited financial statements of each of the Company and DYNA GmbH for the business years ending on 30 September 2006 and 30 September 2007 each consist of a balance sheet and a profit & loss account together with the notes (Anhang) and the reports (Lagebericht) and are attached for identification purposes as Annex 4.6.1 (the "Financial Statements"). The Financial Statements (including the notes thereto) (i) have been prepared in accordance with German GAAP (Rechnungslegung nach dem Handelsgesetzbuch unter Berücksichtigung der Grundsätze ordnungsmäßiger Buchführung and such accounting principles have been applied consistently and without change with respect to the preceding years (Bilanzkontinuität); (ii) are complete and correct in all material respects and (iii) present a true and fair view of the assets and the liabilities, the financial condition, changes in capital, cash flows and results of operations of therelevant company and the business of such company as of the respective dates of and for the periods referred to in such Financial Statements. All reserves, provisions and accruals contained in the Financial Statements of the Company and DYNA GmbH have been made in accordance with German GAAP.
- **4.6.2.** [intentionally omitted]
- **4.6.3.** Neither of the Company nor DYNA GmbH has any liability (and there is no basis for

any present or future Proceeding against it giving rise to any liability), other than (i) those liabilities accounted or accrued for in their full amount on the face of the Financial Statements or obligations incurred in the ordinary course of business for specific performance (vertragliche Erfüllungsansprüche) under ongoing contracts (schwebende Geschäfte) to the extent that such obligations are not to be shown in a balance sheet (vicht bilanzierungsfähig); and (ii) to the extent not required to be included on the liabilities side of the balance sheet in accordance with German GAAP, any contingent liabilities (Eventualverbindlichkeiten), including liabilities based on comfort letters (Patronatserklärungen) and other off-balance sheet undertakings of a similar nature, that have been included in the notes to the Financial Statements; provided, however, such liabilities do not relate to any breach of agreement or violation of any Legal Requirement. Since the Calculation Date, the Company and DYNA GmbH have incurred liabilities only in the ordinary course of business.

- **4.6.4.** According to the Sellers' best knowledge, the internal controls and procedures of each of the Company and DYNA GmbH are sufficient to ensure that each of the Financial Statements are accurate in all material respects.
- 4.6.5. The books of account of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary have been maintained in accordance with sound business practices, including the maintenance of adequate internal controls, are accurate and complete in all material respects and there are no material inaccuracies or discrepancies of any kind contained or reflected therein. The meeting minutes relating to shareholder meetings of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary contain accurate and complete records of all meetings held of, and corporate action taken by, the respective shareholders of the Company, DYNA GmbH and each Operating Subsidiary.
- **4.6.6.** Annex 4.6.6 identifies (i) any off-balance sheet arrangements with respect to each of the Company and DYNA GmbH, and (ii) any disputes between any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries and its respective auditors.
- **4.6.7.** Annex 4.6.7 lists all of the indebtedness of each Operating Subsidiary as of the Calculation Date.
- **4.6.8.** There is no negative impact on the combined balance sheet of the Company and DYNA GmbH as of the Calculation Date from the activities of the Subsidiaries for the period

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ending on the Calculation Date.

- **4.6.9.** There is no, nor will there be any, event or circumstance of the Subsidiaries that would have a detrimental effect on the combined profit and loss statement of the Company and DYNA GmbH for the three (3) months ended 31 December 2007 or the combined balance sheet of the Company and DYNA GmbH as of 31 December 2007
- 4.6.10. Neither the Company nor DYNA GmbH has guaranteed or is otherwise liable for any debt obligation of any of the Subsidiaries.
- 4.7 Assets, Product Liability
- 4.7.1. Each of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary have good, marketable and valid title (free and clear of any Lien) to, or, in case of leased or licensed property and assets, have valid rights as lessee or licenses in or similar rights to use, and undisturbed and unchallenged possession of all fixed and revolving assets (Anlage- und Umlaufvermögen) reflected in the Financial Statements, except for fixed assets disposed of since Calculation Date in the ordinary course of business (the "DYNA-Assets"), or except for assets that are subject to vendors' retention of title rights Eigentumsvorbehalt) as disclosed in Annex 4.7.1. The Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary have good and valid title to all assets that are necessary for or desirable to carry out the Business.
- **4.7.2.** All DYNA-Assets are in good operating condition and repair, according to their normal wear and tear, are adequate and appropriate for the respective uses to which they are being put.
- 4.7.3. Annex 4.7.3-1 contains a list of all real estate property owned by either of the Company and DYNA GmbH (the 'Real Property'). The Company and DYNA GmbH each has good and marketable title to its respective Real Property and such Real Property is not subject to any Lien that would affect or restrict the continued use of such Real Property by the Company or DYNA GmbH, as appropriate. Any Lien or other encumbrance affecting the Real Property has been or is being complied with. Except as set forth on Annex 4.7.3-2, to Sellers' Knowledge, there exist no circumstances that with or without the passage of time or taking of other action would adversely restrict the continued possession, enjoyment or use of the Real Property for the provision of services in connection with the Business. All statutes, orders or regulations affecting the Real

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Property, its current use or the employment of persons or the use of any fixtures, machinery or chattels in it, have been observed and there are no outstanding requirements or recommendations of any competent authority regarding the Real Property and the Real Property complies with the current requirements of the insurers of the Real Property. Each building and other structure on or comprising the Real Property is in good repair and condition. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries expect that (i) the expenditure for repair and maintenance in respect of the Real Property within three (3) years after the Closing Date, and (ii) no buildings or structures on or comprising the Real Property require substantial works of construction, refurbishment or alteration in an aggregate amount for (i) and (ii) exceeding EUR 100,000 (Euro one hundred thousand). None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has received any adverse surveyors', engineers' or other professionals' reports in respect of the Real Property. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has received a written threat of condemnation or similar Proceeding relating to the Real Property exceeding an amount of EUR 50,000 (Euro fifty thousand) in each single case or an amount of EUR 100,000 (Euro one hundred thousand) in aggregate.

4.7.4. Annex 4.7.4 contains a complete list of lease agreements concluded by the Company and DYNA GmbH regarding Real Property. Each of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary has valid and enforceable leases or sub-leases, as the case may be, with respect to the real property that is leased to each such DYNA Group Companies. The real property leased by the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary is appropriate and sufficient for purposes of conducting the respective business of the respective DYNA Group Companies as currently being conducted.

Any leased building or any leased premises is in good repair and condition, and none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries expect that (i) the expenditure for repair and maintenance will be required in respect of the leased buildings or leased premises within three (3) years after the Closing Date and (ii) no buildings or leased premises require substantial works of construction, refurbishment or alteration exceeding an aggregate amount of EUR 150,000 (Euro one hundred fifty thousand) per year. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries have received any

adverse surveyors', engineers' or other professionals' reports in respect of the buildings or leased premises.

The business conducted by the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries on the leased real property is duly authorized by the applicable lease agreements. No event or condition exists, or is alleged by any other party, to have occurred or exist, that constitutes a basis for a termination for cause (*auβerordentliches Kündigungsrecht*) of any such agreements and no notice of termination with respect to any of the lease agreements listed in<u>Annex 4.7.4</u> has been served on any of the DYNA Group Companies.

- **4.7.5.** Except as disclosed in <u>Annex 4.7.5</u>, neither any of Sellers 1, 2 or 3 nor their relatives in the meaning of Sec. 15 German Tax Code (*Abgabenordnung*) own any asset (whether tangible or intangible) that constitutes a material basis for the Business (*wesentliche Betriebsgrundlage*). The same applies for the Seller 4 and its affiliates pursuant to Sec. 15 *et seq*. of the German Stock Corporation Act (*Aktiengesetz*) as well as for Mr. Mertens and his relatives in the meaning of Sec. 15 German Tax Code (*Abgabenordnung*).
- **4.7.6.** There are no products warranty claims (*Gewährleistungsklagen*) against any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Facilities pending and no such claim has been asserted in the past against any of the DYNA Group Companies. To the Sellers' Knowledge, none of the DYNA Group Companies will have any liability under the terms of any express or implied product warranties of the DYNA Group Companies, except to the extent expressly or in general reserved in the Financial Statements.

#### 4.8 Intellectual Property Rights

4.8.1. Annex 4.8.1 contains a list of all current brand names, trade names, patents, patent applications, trademarks, trademark applications, trade secrets, copyrights, service marks and other intellectual property rights (whether or not registered) including domain names and databases that are owned by or have been filed by the Company or DYNA GmbH (the "Intellectual Property Rights"). Intellectual Property Rights include, without being limited to, patents and patent applications, rights in inventions, all information and know-how that is of a confidential nature or not generally known in the public domain; utility models and design patents together with applications therefore, contracts for material software that is licensed or otherwise used by the

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Company or DYNA GmbH, and all software that is owned by the Company or DYNA GmbH. The Company and DYNA GmbH own solely and exclusively (free and clear of any Liens) and/or have the right to use all Intellectual Property Rights for the conduct of the Business.

#### **4.8.2.** Except as set forth in Annex 4.8.2,

- (i) each of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary have validly maintained Intellectual Property Rights owned or used by any of the DYNA Group Companies and no Seller or any employee of any of the Company, DYNA GmbH or, to Sellers' Knowledge, any Operating Subsidiary has any rights to any Intellectual Property Rights used by any such DYNA Group Company or has a claim for compensation for such Intellectual Property Rights;
- (ii) each Intellectual Property Right owned by any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries immediately prior to the Closing will be owned by the respective DYNA Group Companies on identical terms and conditions immediately subsequent to the Closing;
- (iii) with respect to each Intellectual Property Right that any third party owns and that any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries uses, or intends to use as the business is presently intended to be conducted, pursuant to license, sublicense, agreement or permission immediately prior to the Closing, (A) such Intellectual Property Right will be available for use by the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary on identical terms and conditions immediately subsequent to the Closing; (B) all such licenses, sublicenses, agreements and permissions (each as amended to date) of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries covering the item is binding and enforceable; and (D) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries nor any other party to the license, sublicense, agreement or permission is in breach or default, and no event has occurred that with notice or lapse of time or both would constitute a breach or default or permit termination or modification thereunder;

- (iv) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has granted any license (exclusive or non-exclusive) with respect to any Intellectual Property Right to any third party (other than any entity of the DYNA Group);
- (v) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has ever agreed to indemnify any person for or against any interference, infringement, misappropriation or other conflict with respect to any Intellectual Property Right owned or used by any of the DYNA Group Companies;
- (vi) to the Sellers' Knowledge, no third party is infringing or making unauthorized use of any Intellectual Property Rights owned by any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries;
- (vii) the consummation of the Contemplated Transactions will not result in the loss or impairment of the rights of any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries to own or use any of the Intellectual Property Rights, nor will such consummation require the consent of any third party in respect of any Intellectual Property Right; and
- (viii) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has interfered with, infringed upon, misappropriated, reverse engineered or otherwise come into conflict with any Intellectual Property Rights of third parties and has never received any charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation, reverse engineering or violation.
- 4.8.3. None of the Intellectual Property Rights of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is subject to any outstanding Order that restricts the use thereof by it and, to the Sellers' Knowledge, no third party has asserted or claimed any challenges to, and no Proceeding is pending or is threatened that challenges the legality, validity, enforceability, use or ownership of any Intellectual Property Right owned or used by any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries and there is no basis for such assertion or claim.

Subsidiaries respectively own all Intellectual Property Rights or licenses thereof necessary or desirable for the operation of their respective current businesses as presently conducted and as presently proposed to be conducted (other than commercially available off-the-shelf software purchased or licensed for less than a total cost of EUR 1,000 (Euro one thousand) in the aggregate). This applies especially but is not limited to the right to use the software necessary to operate the relevant respective business.

#### 4.9 Compliance with Laws and Permits

4.8.4.

- 4.9.1. Each of the Company, DYNA GmbH, Troisdorf GHG, Würgendorf GHG and, to Sellers' Knowledge, the Operating Subsidiaries validly holds, or Troisdorf GHG or Würgendorf GHG holds on its behalf, all governmental permits, licenses, authorizations and consents that are required by any competent authority in order to conduct the businesses of such DYNA Group Company as presently conducted (the "Governmental Permits"). All Governmental Permits held by the Company, DYNA GmbH, Troisdorf GHG and Würgendorf GHG are valid and in full force and effect. Except as disclosed in <a href="Annex 4.9.1">Annex 4.9.1</a>, no Governmental Permit for the operations of the Company, DYNA GmbH nor, to Sellers' Knowledge, each Operating Subsidiary has been cancelled or revoked by any competent authority and none of the Company, DYNA GmbH or, to Sellers' Knowledge, any Operating Subsidiary has received any notice by any such authority that it intends to cancel or revoke any Governmental Permit. To the Sellers' Knowledge, no circumstances exist that could result in a revocation or limitation of the Governmental Permits, including, but not limited to, as a consequence of the implementation of this Agreement or other Contemplated Transactions, or that could lead to the imposition of conditions to the Governmental Permits.
- 4.9.2. Each of the Company, DYNA GmbH and, to Sellers' Knowledge, the Subsidiaries conducts, and has at all times during the last five (5) years conducted, its business, in all material respects, in compliance with Legal Requirements applicable to it, the conduct of its business or the ownership or use of its assets or properties and all Governmental Permits in such jurisdictions where any of such DYNA Group Companies conducts its business, in each case as in effect, enforced and construed on the date hereof, except as disclosed in <a href="Annex 4.9.1">Annex 4.9.1</a>. None of the Company, DYNA GmbH or, to Sellers' Knowledge any Operating Subsidiary nor Seller has received any notice of any violation of any such Legal Requirement or Governmental Permit or of any obligation

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to undertake any material remedial action under any such Legal Requirement or Governmental Permit and, to the Sellers' Knowledge, there has been no assertion by any governmental authority of any such violation or obligation. In particular, but without limitation, none of the Company, DYNA GmbH or, to Sellers' Knowledge, the Subsidiaries is or was an addressee of claims by any person for the violation of direct marketing law during the past five (5) years.

- 4.9.3. Each of the Company, DYNA GmbH and, to Sellers' Knowledge, the Subsidiaries and, to Sellers' Knowledge, each of their respective predecessors concerning the assets of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary (i) has materially complied and are in material compliance with all Environmental, Health and Safety Laws and (ii) has and has had reasonable procedures in place to address compliance with all Environmental, Health and Safety Laws. Neither any of the Company, DYNA GmbH or, to Sellers' Knowledge, the Subsidiaries nor, to Sellers' knowledge, each of their respective predecessors has received any written or oral notice, report, or other information regarding any actual or alleged violation of Environmental, Health and Safety Laws.
- **4.9.4.** Except as disclosed in <u>Annex 4.9.4</u>, with regard to noise emissions, the continuous operation of the DYNA GroupCompanies' business is ensured and no orders to stop the business operations of any of the Company, DYNA GmbH or, to Sellers' Knowledge, the Subsidiaries have been issued or enforced in the past.
- 4.9.5. During the past five (5) years, to the Sellers' Knowledge neither any of the Company, DYNA GmbH or, to Sellers' Knowledge, the Subsidiaries, nor any affiliate, shareholder, partner, manager, director, officer, agent or employee of any DYNA Group Company, or any other person associated with or acting for or on behalf of any DYNA Group Company, has directly or indirectly (i) made any unlawful payment to any person; (ii) performed any unlawful favor or given any unlawful gift; (iii) used funds of any DYNA Group Company (A) to make any unlawful political contribution or gift or for any other unlawful purpose relating to any political activity; (B) to make any unlawful payment to any governmental official or employee; (C) to establish or maintain any unlawful or unrecorded fund or account of any nature; (D) to make any contribution, gift, bribe, rebate, disbursement, influence payment, kickback or other payment to any person, private or public, regardless of form, whether in money, property or services (a) to obtain favorable treatment in securing business, (b) to pay for favorable treatment for business secured, (c) to obtain special concessions or for special

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concessions already obtained, or (d) in violation of any applicable Legal Requirements; (iv) established or maintained any fund or asset that has not been recorded in the books and records of the Sellers, or any DYNA Group Company or their respective affiliates; or (v) agreed, committed or offered (in writing or otherwise) to take any of the actions described in clauses (i) through (iv) above.

## 4.10 Material Agreements

- 4.10.1. Annex 4.10.1 contains a list of all contracts to which the Company or DYNA GmbH is a party and that have not yet been completely fulfilled (the 'Material Agreements') that:
  - (i) involve the ten (10) largest customers and the ten (10) largest suppliers of the Company and DYNA GmbH based on revenues in the business year ending on Calculation Date;
  - (ii) relate to the acquisition or sale of interests in other companies, businesses or real estate;
  - (iii) comprise the services still to be rendered vis-à-vis the Company or DYNA GmbH by third parties under the mutual supply agreements regarding the business of the Company and DYNA GmbH on the Troisdorf and Würgendorf sites;
  - (iv) relate to the rental and lease of real estate that, individually, provide for annual payments of EUR 50,000 (Euro fifty thousand) or more and that cannot be terminated by the Company or DYNA GmbH on twelve (12) months or more notice without penalty;
  - (v) involve non-compete covenants or other non-compete agreements that restrict either the Company or DYNA GmbH from operating its business as presently conducted:

- (vii) concern loan agreements, bonds, notes or any other instruments of debt involving any third party outside the DYNA Group Companies
- (viii) involve guarantees, indemnities or suretyships issued for any debt of any third partyor a DYNA Group Company;
- (ix) involve agreements with any of the Sellers, other than in connection with commercial transactions made in the ordinary course of the DYNA Group Companies' respective businesses;
- (x) concern a joint venture, partnership, strategic alliance or joint development of products;
- (xi) concern any loan or extension of credit to directors or executive officers;
- (xii) relate to any continuing obligations (*Dauerschuldverhältnisse*) other than described above in this <u>Section 4.10.1</u> that cannot be terminated within a notice period of three months or that provide for annual obligations of the Companies in excess of EUR 50,000 (Euro fifty thousand); or
- (xiii) (A) involve a value in excess of EUR 50,000 (Euro fifty thousand) per annum or (B) that may otherwise be material (in the determination of a reasonably prudent operator in the Company's Business) to either the Company or DYNA GmbH, and (C) those containing change of control provisions according to which such agreements could be terminated or materially affected as a result of a consummation of the transactions contemplated by this Agreement.
- 4.10.2. Unless otherwise disclosed in Annex 4.10.2, each Material Agreement is valid and enforceable in accordance with its terms, has been entered into in the ordinary course of business and, where concluded with the Sellers and their related parties at arms' length terms, and the Company and DYNA GmbH have in all respects complied with all Material Agreements and have taken all reasonable steps in the ordinary course of business to be in a position to fulfill the obligations under such Material Agreements when they become due and neither the Company or DYNA GmbH nor, to the Sellers' Knowledge, any other party thereto is in default under the terms of any such Material Agreement and no other event has occurred or condition exists that, with notice or lapse of time or both, would constitute a default by either the Company or DYNA GmbH or, to Sellers' Knowledge, any other party to any such Material Agreement.

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- **4.10.3.** Except as disclosed in <u>Annex 4.10.3</u>, no third party is entitled to terminate or materially amend any terms of any Material Agreement as a result of the execution and consummation of this Agreement and the consummation of the Contemplated Transactions.
- **4.10.4.** For the Company and DYNA GmbH, there are no agreements with distributors or sales representatives, other than those referred to in<u>Annex 4.10.4</u>. The Sellers have provided to the Purchaser true, complete and correct copies of all such agreements, as amended to date. There are no outstanding payments to distributors or sales representatives other than shown in the Financial Statements or occurred in the ordinary course of business since Calculation Date.
- **4.10.5.** Annex 4.10.5 sets forth each Material Agreement that requires the consent of or notice to any third party in connection with the consummation of any of the Contemplated Transactions.

## 4.11 Managing Directors and Employees

- 4.11.1. Annex 4.11.1 contains a true, correct and complete list outlining all managing directors of the DYNA Group Companies.
- 4.11.2. Annex 4.11.2-1 contains a true, correct and complete list of the names, jobs and material details of the terms of employment (including, without limitation, salary, benefits, seniority, age) of every individual employed or engaged (whether as a managing director, an employee or a consultant) by the Company and DYNA GmbH (the "Employees") and there is no omission that makes that list misleading. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries makes or has agreed to make ex gratia payments to any Employee or former Employee or spouse, child or dependent of any of them. There have been no issues relating to the treatment of freelancers by the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary and no freelancer employed or retained by the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries as a so-called "Scheinselbständiger". No commitments have been made outside the ordinary course of business by the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries to the Employees, the unions and / or the workers' council to amend any works agreement or collective bargaining agreement, to increase or decrease benefits thereunder or to establish any new works agreements or collective bargaining agreements. There are no imminent changes, with

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the exception of the regular increase of wages of four percent (4%) as per 1 October 2007 and of individual increases set forth in Annex 4.11.2-2, in any wages or other compensation of any of the Employees of the Company, DYNA GmbH or, to Sellers' knowledge, the Operating Subsidiaries. The Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary have, in relation to each of their respective Employees, complied with all statutes, regulations, codes of conduct, works agreement, collective bargaining agreements, terms and conditions of employment, orders and awards relevant to their conditions of service or to their relations with the Employees or any recognized trade union or works council. Annex 4.11.2-3 contains for identification purposes copies of five agreements. There are no other employee benefit plans, stock purchase plans and similar plans for the benefit of the Employees by which any of the Company and DYNA GmbH are bound or that have been introduced in draft form to the Employees.

- **4.11.3.** None of the DYNA Group Companies is party to any agreements with unions (*Gewerkschaften*) and similar organizations (including, without limitation, works agreements and collective bargaining agreements) by which any of the Company and DYNA GmbH, as of the Closing Date, are bound.
- **4.11.4.** None of the managing directors of the Company, DYNA GmbH or, to Sellers' Knowledge, any of theOperating Subsidiaries and of the employees of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries whose annual base salary (excluding, for the avoidance of doubt, performance-related payments, bonuses and any benefits), exceeds EUR 60,000 (Euro sixty thousand) has given written notice of termination of his or her employment.
- 4.11.5. Except for any pension rights deriving from the pension plans disclosed in Annex 4.11.5 and direct pension insurances (Direktversicherungen) listed in

contributions with respect to direct or indirect pension and retirement benefits to Employees ending prior to or on the Closing Date have been paid, or have been accrued for in compliance with the applicable generally accepted accounting principles. The reserves made in the balance sheets included in the Financial Statements for pension commitments (together with any pension liability insurance (*Rückdeckungsversicherung*) taken out by the Company and DYNA GmbH respectively) are in accordance with German GAAP (*HGB*).

- **4.11.6.** None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is experiencing (i) any strike, lockout or slowdown of its employees (and no such strike, lockout or slowdown is threatened) or (ii) any lawsuit or dispute with any union, workers' council, other body employee representatives or Employee pending or threatened before any court, governmental authority or arbitrator (including any Proceedings pending before any conciliation committee (*Einigungsstellenverfahren*)).
- **4.11.7.** There are no non-compete agreements with third parties entailing compensation of any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries based on the non-compete regulation.
- 4.11.8. To Sellers' Knowledge, any permission required by law with regard to committed employees (iberlassene Arbeitnehmer) of third-party companies exist.
- **4.11.9.** Any employee inventions (*Arbeitnehmererfindungen*) of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries are listed in Annex 4.11.9.
- **4.11.10.** The employees of the Company or DYNA GmbH being in partial retirement (*Altersteilzeit*) are listed in <u>Annex 4.11.10</u>. All requirements are fulfilled in order to receive public reimbursement by the competent employment offices in connection with partial retirement.
- **4.11.11.** All claims vis-à-vis the Company resulting from the balancing of interest (*Interessenausgleich*) concluded between Dynamit Nobel GmbH Explosivstoff- und Systemtechnik and the works councils of the branches in Troisdorf and Würgendorf on 27 September 2001 have been fully fulfilled and are finally settled.
- **4.11.12.** Annex 4.11.12 contains a list of all shop agreements that originally were concluded with Dynamit Nobel GmbH Explosivstoff- und Systemtechnik and that are still in force within the Company or DYNA GmbH due to the transfer of employees from Dynamit

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Nobel GmbH Explosivstoff- und Systemtechnik to the Company; this list comprises the employees of the Company and DYNA GmbH to which any shop agreement is applicable.

- **4.11.13.** There are no shop agreements (*Betriebsvereinbarungen*) concluded between the works councils (*Betriebsräten*) (including the general works council *Gesamtbetriebsrat*) and either of the Company or DYNA GmbH except as disclosed in Annex 4.11.13.
- **4.11.14.** Neither the Company nor DYNA GmbH is party to any kind of employers' associations. Except asdisclosed in <u>Annex 4.11.14</u>, neither the Company nor DYNA GmbH is bound by any collective agreements (*Tarifverträge*).
- **4.11.15.** No employee of the Company or DYNA GmbH has a contractual right to any (i) extra income orbonus payment from the Company or DYNA GmbH as a result of the execution of this Agreement or the consummation of the Contemplated Transactions or (ii) enhanced redundancy or severance payment from the Company or DYNA GmbH arising solely from the execution of this Agreement or consummation of the Contemplated Transactions.
- **4.11.16.** No non-compete covenants have been agreed upon with any employees of the Company or DYNA GmbH that requires the Company or DYNA GmbH to pay compensation after the termination of such employees.

#### 4.12 Insurance

Annex 4.12-1 contains a list of all insurance policies relating to the assets, Business or operations of the Company and DYNA GmbH. Such insurance coverage, in the determination of a reasonably prudent operator in the Company's Business, is adequate and customary for business operations such as the Business. All premiums due under the relevant insurance policies have been paid when due, and neither the Company nor DYNA GmbH is in breach of any other provision of the insurance contracts. All such policies are binding and enforceable except as disclosed in Annex 4.12-2. There are no material claims by the Company or DYNA GmbH pending under any of such policies as to which coverage has been questioned, denied or disputed by the insurer except for the claims against GVG Grzybowski Versicherungs-Vermittlungs-GmbH concerning the insurance Gerling Allgemeine Versicherungs-AG that is described in Annex 4.12-3.

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## 4.13 Litigation

Except as disclosed in <u>Annex 4.13</u>, none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is involved in any Proceedings whether pending (*rechtshängig*) or threatened in writing before any court of justice, arbitration panel, administrative authority or other governmental body and, to the Seller's Knowledge, there are no circumstances that could lead to any such Proceedings.

#### 4.14 Compliance and Change of Control

- **4.14.1.** The Sellers guarantee that neither the execution and delivery of the Transaction Documents nor the consummation of the Contemplated Transactions will, directly or indirectly:
  - (i) contravene any provision of law applicable to any of the Sellers or the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries or by which any of their respective assets or properties may be bound;

- contravene any provision of the articles, bylaws or equivalent organizational documents of any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries;
- (iii) provided that there will be no change in the management(Geschäftsleitung) of the Company and of DYNA GmbH, contravene any of the terms of, or give any governmental body the right to revoke or modify, any governmental authorization that is held by, or on behalf of, any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries and/or any Seller or by which any of their respective assets or properties may be bound;
- (iv) change or create any liability of any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries or give any person any rights or remedies against any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries or give to any person any rights of termination or modification of any agreement or permit to which any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries or their respective assets or properties is bound or affected, including, but not limited to, agreements with

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- shareholders and employees, in each case, with or without the passage of time or giving of notice or both;
- (v) alter, diminish or (directly or indirectly) result in the loss of any asset of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries, or create any rights or assets in any other person that may be adverse to the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries; or
- (vi) result in the imposition of any Lien on any of the Company Shares or the assets or properties of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries.
- **4.14.2.** The Sellers are not, nor will be, required to obtain any consent from any third party in order to validly execute and deliver the Transaction Document or toperform any of their obligations thereunder.
- 4.14.3. The change of the shareholding in the Company to the Purchaser does not have any negative impact on the legal position of the Company within Troisdorf GHG.
- 4.14.4. The change of the shareholding in the Company to the Purchaser does not have any negative impact on the legal position of the Company within Würgendorf GHG.

#### 4.15 Information Technology

All computer hardware, software, firmware, networks and other information technology and any aspect or asset of a business that relies on any of the foregoing, whether embedded or otherwise (the "Information Technology") used by or required to carry on the Business of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary in the manner carried on prior to and/or as at the Closing Date (including the fulfillment of existing contracts and commitments) is either owned or validly leased or licensed to the Company, DYNA GmbH and the Operating Subsidiaries for a period of at least twelve (12) months after the Closing Date. The Information Technology owned or used by the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary and/or that relates to the Business has the capacity and performance necessary to fulfill the present requirements of the respective company.

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## 4.16 [intentionally omitted]

## 4.17 Events since Calculation Date

Since the Calculation Date, except for any Contemplated Transactions:

- (i) the business of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary has been carried out in the ordinary and usual course consistent with past practice;
- there has not occurred any Material Adverse Change, or any development that is reasonably likely to cause a Material Adverse Change to, the DYNA Group Companies taken as a whole. A "Material Adverse Change" to a person means a material adverse change in or any result, effect, event, occurrence, fact, change, contingency or circumstance (whether or not constituting a breach of a representation, warranty or covenant set forth in this Agreement) that, individually or in the aggregate with any such other results, effects, events, occurrences, facts, changes or circumstances has had or could reasonably be expected to result in a material adverse effect on the Business, key members of management, assets, condition (financial or otherwise), liabilities or results of operations (including earnings or cash flow) of any such person, taken as a whole, as determined from the perspective of a reasonable person in Purchaser's position including the taking of any action contemplated by any Transaction Documents;
- (iii) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has terminated any business relationship that is material to the business of the Company, DYNA GmbH or the Operating Subsidiaries;
- (iv) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiariss (A) has, outside of its usual course of business, entered into any agreement except as disclosed in <a href="Annex 4.17(iv)">Annex 4.17(iv)</a>. (B) incurred any capital expenditure or guarantee in excess of EUR 75,000 (Euro seventy-five thousand); (C) disposed of or encumbered any of its tangible or intangible long-term assets (\*Anlagevermögen\*) or shares in excess of EUR 75,000 (Euro seventy-five thousand) or (D) contributed in kind or in cash into another DYNA Group Companies, a joint venture or another third-party company, with an individual value in excess of EUR 75,000 (Euro seventy-five thousand);

the DYNA Group or (B) have entered into agreements according to which any of the DYNA Group Companies is obliged to make such distributions;

- (vi) issued any share capital or similar interest to an entity that is not part of the DYNA Group;
- (vii) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has become a party to any merger, divestiture of a business (in whole or in part) or a company, spin-off agreement or a similar transaction;
- (viii) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has caused or experienced any damage to or destruction of, or written-off or written-down any of, its material tangible or intangible assets with the exception of rectifications of entries concerning the Financial Statements as of the Calculation Date, which rectifications were performed in the ordinary course of business in a manner consistent with past practice with the exception of rebookings (*Umbuchungen*) in connection with the preparation of the annual Financial Statements insofar as these rebookings are in accordance with the rules for proper bookkeeping pursuant to German GAAP (*HGB*);
- (ix) other than in the ordinary course of business none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has incurred, assumed or guaranteed any material indebtedness;
- (x) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has made any advance or extended any loan to any third party except for any trade receivables (*Forderungen aus Lieferungen und Leistungen*) made available to the Purchaser prior to the Closing Date and other than payment grace periods (*Zahlunsgziele*) in the ordinary course of business;
- (xi) except as disclosed in <u>Annex 4.17(xi)</u>, none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has made any payments,

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- incurred any costs or has any obligations to make payments related to any of the Contemplated Transactions;
- (xii) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has changed any of the accounting principles or practices used by it in the past;
- (xiii) no modifications have been made to the articles of association, partnership agreements, by-laws or other constituent documents of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries;
- (xiv) except as otherwise disclosed in Annex 4.11.2-1 or Annex 4.11.2-2, no employees have been hired, no material increases (i.e., increases by more than four percent (4%)) in employee remuneration or benefit plans (unless required by law, prior agreement, collective-bargaining agreement or enterprise agreement) have been made by the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries and none of the employment or service agreements for employees, officers or directors of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has been otherwise amended or extended;
- (xv) no party (including any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries) has (including given notice of any of the following) accelerated, terminated, modified or cancelled any Material Agreement; or contract (or series of related contracts) involving more than EUR 40,000 (Euro forty thousand) to which the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is a party or by which any DYNA Group Company is bound;
- (xvi) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has discharged a material liability or Lien outside the ordinary course of business;
- (xvii) neither the Company nor DYNA GmbH has made any investment in or loans to any affiliate of such company, including its joint ventures; and

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(xviii) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has undertaken to do any of the matters listed in Section 4.17(i) through (xvii) above.

## 4.18 No Broker

None of the Sellers, the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has any liability to any broker, finder, or agent with respect to the Contemplated Transactions for which Purchaser shall have any liability.

## 4.19 Accounts Receivable

The accounts receivable of the Company and DYNA GmbH as reflected in the Financial Statements (i) are reflected properly on its books and records, (ii) are genuine, good and collectible within ninety (90) days after their respective due date in accordance with their terms at their recorded amounts, (iii) arose in the ordinary course of business from bona fide transactions and (iv) to Sellers' Knowledge, are not subject to any setoff, counterclaim, deduction or defense other than as reflected in the applicable reserves as reflected in the Financial Statements. The allowance for doubtful accounts is materially true and correct and accurate. The allowance for doubtful accounts is not materially true and correct and accurate if the actual shortfall exceeds the allowances by more than EUR 75,000 (Euro seventy-five thousand). A currency devaluation shall not be deemed as shortfall of the accounts. Annex 4.19 provides a breakdown and aging of all accounts receivable, notes receivable and other receivables of the Company and DYNA GmbH as of the Calculation Date and identifies all unreturned security deposits and other deposits made by, or held by any person for the benefit of, the Company or DYNA GmbH. For each of the Company and DYNA GmbH, the reserves established for doubtful accounts, any valid counterclaims, set-offs, deductions, or allowances as reflected in the Financial Statements is in accordance with the past practice of the Company and DYNA GmbH in the ordinary course of business.

### 4.20 Tax Representations

Effective as of the date hereof, the Sellers make the following representations (in the form of an independent guarantee (elbständiges Garantieversprechen) to the

**4.20.1.** All Tax Returns and all notices and information required to be filed or given by or on behalf of any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries in respect of any Taxes have been properly prepared, executed

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- and duly filed or given within applicable time limits pursuant to applicable Legal Requirements. Such Tax Returns, notices and information are true and accurate in all material respects and are not the subject of any question or dispute nor are likely to become the subject of any dispute.
- **4.20.2.** All Pre-Calculation Date Taxes owed by the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries have been timely paid or, if not due and payable, sufficient reserves (*Rückstellungen*) have been adequately provided for in the Financial Statements. All Pre-Closing Date Taxes owed by the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries have been timely paid if due and payable on or before the Closing Date. For the avoidance of doubt, this also includes any real estate transfer Taxes relating to restructurings and similar measures effected prior to the Closing Date.

  Section 13.1 applies.
- **4.20.3.** Each of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary are not and have not, at any time, been treated as resident in any other jurisdiction for any Tax purpose (including any double taxation treaty) except for the jurisdiction of their place of incorporation or registered seat (*Hauptsitz*). None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is subject to Tax in any jurisdiction other than its place of incorporation or registered seat (*Hauptsitz*) by virtue of having a permanent establishment or a place of business outside the jurisdiction of its place of incorporation or registered seat.
- **4.20.4.** Since their incorporations (*Gründungen*) none of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has been involved in an extraordinary audit or investigation, or a dispute in relation to Taxes and have not paid or become liable to pay any penalty, surcharge, fine or interest in respect of Taxes. No such extraordinary audit, investigation or dispute is imminent, threatened or likely to be threatened against any of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries except for ordinary tax assessments (*Betriebsprüfungen*).
- **4.20.5.** None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. There are no binding rulings or written and binding agreements with any Tax authorities that will remain or become effective after the Closing Date.
- **4.20.6.** None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating

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- Subsidiaries has benefited from any fiscal advantage or favorable Tax regime in exchange for undertakings, covenants or obligations by which it is still directly or indirectly bound or shall incur any additional Tax burden after the Closing Date as a result of having obtained a benefit from any fiscal advantage or favorable Tax regime. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has received any subsidies or grants of any kind that may be, or may become, repayable following the Closing Date.
- 4.20.7. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries is a party to any Tax allocation or Tax sharing agreement.
- **4.20.8.** None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has recorded shares or any other fixed assets below their adjusted book values. None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries holds tainted shares that cannot be sold under a beneficial tax regime generally applicable to the sale of shares (including, without limitation, Sec. 8b(2) of the German Corporate Income Tax Act).
- **4.20.9.** All Tax relevant transactions and events have been duly documented in the books and records of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary and all bookkeeping and relevant business records have been properly prepared and retained and are available for all Tax periods, in each case as required by applicable Legal Requirements.
- **4.20.10.** None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has made any hidden distribution or withdrawal of profits (verdeckte Gewinnausschüttung).
- **4.20.11.** None of the Company, DYNA GmbH or, to Sellers' Knowledge, any of the Operating Subsidiaries has experienced any excessive withdrawals *Überentnahmen*) in the meaning of Sec. 4, Para. 4a German Income Tax Code.
- 4.20.12. Neither the claims for Tax refunds nor the value of any deferred Tax assets have been overstated in the Financial Statements.
- **4.20.13.** The Company, DYNA GmbH and, to Seller's Knowledge, each Operating Subsidiary has complied in all respects with applicable Tax or social security Legal Requirements. All Taxes and social security contributions that the Company, DYNA GmbH or, to

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Sellers' Knowledge, any of the Operating Subsidiaries is required by applicable Legal Requirements to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and entered in the books of such DYNA Group Company.

### 4.21 Inventory

The inventory of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary consists of raw materials and supplies, manufactured and purchased parts, goods in process and finished goods, all of which is merchantable and fit for the purpose for which it was procured or manufactured, and none of which is obsolete,

damaged or defective, subject only to the reserve for inventory writedown set forth on the face of the Financial Statement as adjusted for the passage of time through the date hereof in accordance with the past custom and practice of the Company, DYNA GmbH and, to Sellers' Knowledge, each Operating Subsidiary.

#### 4.22 Investment Representations

- **4.22.1.** Each Seller understands that (i) the issuance of DMC Common Stock to Sellers has not been registered under the Securities Act, or under any state securities laws, and are being offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering and (ii) all of the DMC Common Stock issued to such Seller are "restricted securities" within the meaning of the Securities Act and may only be resold by such Seller if such DMC Common Stock are registered under the Securities Laws (as will occur pursuant to Section 10.2) or an exemption from such registration is available.
- **4.22.2.** Each Seller has had full opportunity to review the Purchaser's filings with the SEC and to ask questions and receive answers from representatives of the Purchaser regarding the business, properties, prospects and financial condition of the Purchaser, each as is necessary to evaluate the merits and risks of investing in the DMC Common Stock.

Sec. 5.

#### REMEDIES FOR BREACH OF SELLER'S GUARANTIES

#### 5.1 General/Recoverable Damages

Subject to Section 5.2, in the event of any breach or non fulfillment by the Sellers' guarantees or covenants contained in this Agreement, the Sellers shall be liable as partial debtors (*Teilschuldner*) for putting the Purchaser, or at the election of the Purchaser, the DYNA Group

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Companies, into the same position that they would have been in if the Sellers' Guaranties or covenants contained in this Agreement had been correct or had not been breached (*Naturalrestitution*). The percentage according to which the Sellers are liable vis-à-vis the Purchaser as partial debtors is set forth on Annex 5.1. If the Sellers are unable to achieve this position within sixty (60) days after having been notified by the Purchaser of the breach, the Purchaser is entitled to claim for monetary damages at the sole election of the Purchaser (i) by payment of the amount necessary to fully compensate the damage suffered by the Purchaser or (ii) to fully compensate the Loss suffered by the DYNA Group Companies arising directly or indirectly from the breach or non-fulfillment by the Sellers of any of the Sellers' guarantees or covenants. Sec. 249, *et seq.*, German Civil Code shall apply. Sec. 442 Para. 1 Sentence 2 German Civil Code shall not apply.

### 5.2 Overall Scope of Seller's Liability pursuant to this Agreement

- 5.2.1. The Sellers' aggregate liability under this Agreement including, but not limited to, any and all claims for breach of any of the guaranties pursuant to Section 4, Section 6, Section 7 and Section 9 shall be limited to EUR 13,330,000 (Euro thirteen million three hundred thirty thousand). However, the liability of each Seller shall be limited to the portion equal to the ratio of their respective liability outlined in Annex 5.1.
- 5.2.2. Sellers shall be liable for any breaches of guaranties only to the extent that such damages are not satisfied from insurance proceeds.
- 5.2.3. If a claim is brought for a breach of the guarantees of Section 6.1, to the extent it applies to the Company's property at Königszug, Sellers may purchase the property at Königszug for the purchase price paid by the Company and assume any related liabilities in lieu of paying the Purchaser any damages with respect to the liability for breach of guarantee. The Company shall be entitled to continue use of the property until 31 December 2017 for no charge provided such use is in a manner consistent with the use prior to the sale to Sellers. However, it is agreed that any operational costs (Betriebskosten) for the property at Königszug (i.e., in particular but not limited to any real property tax (Grundsteuer), electricity, water and heating) shall be borne by the Company. In the event capital expenditures are required after the Sellers acquire the property at Königszug according to the provisions above the parties shall enter into good faith negotiations in order to agree as to which costs the Purchaser shall assume.

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## 5.3 De Minimis Amount; Threshold

The Purchaser shall only be entitled to any claims under Section 4 to the extent each individual claim exceeds an amount of EUR 20,000 (Euro twenty thousand) (the 'De Minimis Amount' and being acknowledged that a group of related occurrences of claims having the same course or similar course of action will be considered as one single claim for the purpose of the De Minimis Amount) and the aggregate amount of all such individual claims exceeds EUR 100,000 (Euro one hundred thousand) (the "Threshold"). In case the De Minimis Amount and the Threshold are exceeded, the Sellers' liability shall be for the entire and not limited to the excess amount.

#### 5.4 Procedure in Case of Third Party Claims

- 5.4.1. Furthermore, in the event that in connection with a breach of a guaranty under Section 4, Section 6, Section 7 or Section 9, any claim or demand of a third party is asserted against the Purchaser or any of the DYNA Group Companies, the Purchaser shall (i) make available to the Sellers a copy of the third-party claim or demand and of all time-sensitive documents and (ii) give the Sellers the opportunity to defend the Purchaser or any of the DYNA Group Companies against such claim. The Sellers shall have the right to defend the claim by all appropriate Proceedings and shall have the sole power to direct and control such defense. In particular, without limitation, the Sellers may (i) participate in and direct all negotiations and correspondence with the third party; (ii) appoint and instruct counsel acting, if necessary, in the name of the Purchaser or any of the DYNA Group Companies (for the avoidance of doubts the cost for the counsel shall be borne by the Sellers) and (iii) require that the claim be litigated or settled in accordance with the Sellers' instructions. The Sellers shall conduct such Proceedings in good faith with due regard to the concerns of the Purchaser. The Sellers shall always inform the Purchaser, upon its request (x) of the current status of the defense of the third-party claims, (y) the major developments regarding the defense of third-party claims and (z) the next steps that will be taken by the Sellers to defend the third-party claims before such steps will be taken.
- 5.4.2. In no event shall the Purchaser or any of the DYNA Group Companies be entitled to acknowledge or settle a claim or permit any such acknowledgement or settlement without the Sellers' prior consent to the extent that such claims may result in a liability of the Sellers under this Agreement. The Purchaser or any of the DYNA Group Companies shall reasonably cooperate with the Sellers in the defense of any third-party claim, provide the Sellers and their representatives (including, for the avoidance of doubt, its advisors) access to all relevant business records and documents and permit the

Sellers and its representatives to consult with the directors, employees and representatives of the Purchaser or any of the DYNA Group Companies. All costs and expenses (including advisors' fees) incurred by the Sellers in defending such claim shall be borne by the Sellers.

#### 5.5 Mitigation

Sec. 254 of the German Civil Code shall remain unaffected, i.e., the Purchaser is in particular obliged to prevent the occurrence of any damages and to limit the scope of any damages incurred. If any of the DYNA Group Companies has a monetary advantage (*geldwerten Vorteil*) in connection with a breach of a Guarantee this shall mitigate the remedies of the Purchaser under this Agreement or, if this mitigation is impossible, the respective assets (reflecting the monetary advantage) shall be provided to the Sellers.

#### 5.6 Limitation Periods and Notice of Claim

All of the guaranties of the Sellers in this Agreement shall survive the Closing hereunder (even if the Purchaser knew or had reason to know of any misrepresentation or breach of guaranties at the time of Closing).

All claims for any breach of guaranties of the Sellers pursuant to Section 4 above shall become time-barred (*verjähren*) on the date that is eighteen (18) months after the Closing Date, except for claims based on a breach of the guaranties given under (i) Sections 4.1 through 4.3 and Sections 4.5.1 through 4.5.11, which shall become time-barred three (3) years after the Closing Date and (ii) Section 4.9.3 and Section 6, which shall become time-barred thirty (30) months after the Closing Date. Claims with respect to Taxes (Sec. 5.9) shall become time-barred in accordance with Section 5.10. Sec. 203 of the German Civil Code shall not apply.

#### 5.7 Disclosure Schedules

Disclosure of an item set forth on one Annex in the disclosure schedules shall be deemed to suffice as disclosure in each other Annex in disclosure schedules provided that such item is either expressly cross-referenced in the other Annexes or the application of such item to the other Annexes is accurate and abundantly clear from its context in the first Annex.

#### 5.8 Information Duty

The Sellers are obliged to inform the Purchaser in writing immediately after they became aware

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of any facts that could lead to a breach of the Sellers' guarantees.

#### 5.9 Tax Indemnity

The Sellers shall, as partial debtors (*Teilschuldner*) as further specified under <u>Section 5.1</u>, indemnify and hold harmless the Purchaser and, as the case may be, at the Purchaser's request the DYNA Group Companies, from (i) any Losses arising from or in connection with a breach of a representation contained in <u>Section 4.20</u>, (ii) any Pre-Calculation Date Taxes imposed on any of the DYNA Group Companies and any Losses related to such Pre-Calculation Date Taxes (in particular, any costs incurred in connection with the defense of any Tax related claims prior to the Calculation Date unless covered by a specific Tax provision that was made for the Pre-Calculation Date Tax in the Financial Statements, and (iii) all Taxes related to the Pre-Closing Date Period connected to a non-timely payment of due and payable Taxes. The limitations pursuant to <u>Section 5.2</u> and <u>Section 5.3</u> shall apply. A damage, that Purchaser claims because of Pre-Calculation-Date Taxes, which results from a change of the tax valuation shall be decreased by the positive effects of such a change of tax valuation after the Calculation Date.

#### 5.10 Limitation of Tax Indemnity

Any claims of the Purchaser under Section 5.9 shall be time-barred upon expiration of a limitation period of six (6) months after all indemnifiable Taxes are finally binding and non-appealable (formell und materiell bestandskräftig).

#### 5.11 Satisfaction of Claims

Any payment to be made under this <u>Section 5</u> or under <u>Sections 6</u> or <u>7</u> by the Sellers shall become payable in cash in ten (10) Business Days after the Sellers have received from the Purchaser a notification in writing stating the amount to be paid under the remedies under this <u>Section 5</u> or indemnifications, however any payments with respect to the Tax guarantees and/or Tax indemnities shall become due and payable not prior to the date at which the Taxes become due and payable. The parties agree that the claims of the Purchaser under this <u>Section 5</u> or under <u>Sections 6</u> or <u>7</u> (equal to the damage of the Purchaser or the DYNA Group Companies as elected by the Purchaser in accordance with <u>Section 5.1</u>) shall be satisfied (i) first by transfer of shares or of cash, if available, out of the Hold Back from the Sellers to the Purchaser and (ii) next, in the event the claims of the Purchaser under this <u>Section 5</u> exceed the value of the Hold Back by payment by the Sellers to the Purchaser of the Stock Consideration not in the Hold Back or cash.

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## 5.12 Adjustment to Purchase Price

Any payment by the Sellers to the Purchaser under Sections 5 through 7 and 9 shall be regarded as a reduction of the Purchase Price.

## 5.13 Exclusion of Further Remedies

The rights of the Purchaser in case of any breach or non fulfillment by the Sellers' Guarantees shall be restricted to claims according to this Section 5. Further claims based on German statutory warranty provisions, including without limitations to, reduction of the purchase price (Minderung) or cancellation of the agreement (Rücktritt vom Vertrag), frustration of the contract (Störung der Geschäftsgrundlage according to Sec. 313 German Civil Code), are hereby excluded.

Sec. 6.

## ENVIRONMENTAL MATTERS

#### 6.1 Environmental Guarantees

The Sellers hereby, as partial debtors (Teilschuldner) in accordance with the percentages set forth on Annex 5.1, guarantee to the Purchaser by way of an independent promise

of guaranty pursuant to Sec. 311 Para. 1 of the German Civil Code (selbständiges Garantieversprechen im Sinne des § 311 Abs. 1 BGB) that there are no Environmental, Health and Safety Liabilities or Existing Environmental Conditions that (i) were caused by the operation of the business of the Company, DYNA GmbH or, to Sellers' Knowledge, any Operating Subsidiary, or (ii) that occurred on or related to the Real Property during the period such Real Property was owned or leased by the Company, DYNA GmbH or any Operating Subsidiary. The limitations of liability pursuant to Sections 5.2 through 5.5 and Section 5.11 shall apply accordingly.

#### 6.2 Environmental Claims Insurance

The Sellers have obtained from an insurance company reasonably acceptable to Purchaser an insurance policy to indemnify Purchaser from any Environmental, Health and Safety Liabilities relating to any Existing Environmental Conditions. The policy shall cover damages up to EUR 25,000,000 (Euro twenty-five million) and the premium shall be fully paid for the period ending 30 September 2008. A copy of such insurance policy is attached as <u>Annex 6.2.</u> for identification purposes.

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Sec. 7.

TAXES

#### 7.1 Cooperation on Tax Matters

The Purchaser and the Sellers shall reasonably cooperate, and shall cause their representatives to reasonably cooperate, with each other in connection with all Tax matters relating to any Pre-Closing Date Period, including the preparation and filing of any Tax return or the conducting of any audit, investigation, dispute or appeal or any other communication with any Tax authority. Section 5.4 shall apply accordingly.

#### 7.2 Registration Period Tax Returns

- 7.2.1. As to all Tax Returns of Company and its participations as set out under Recital 5.2 due on or before the date of the registration of the special succession by the Purchaser regarding the KG-Interests with the commercial register as outlined under Section 2.2.7, the Sellers shall cause the Company to prepare and timely file such Tax Returns and pay any Taxes shown as due thereon.
- 7.2.2. As to Tax Returns of the DYNA Group Companies due after the Closing Date for tax periods ending on or before the Closing Date, the Purchaser shall cause the DYNA Group Companies to prepare and timely file such Tax Returns in accordance with past practice; provided, however, (i) the Purchaser shall deliver any such Tax Return to the Sellers at least thirty (30) days before it is due; (ii) the Sellers shall have the right to examine and comment on any such Tax Return prior to the filing thereof; (iii) the Sellers shall provide any notice of objection (a "Notice of Objection") no later than fifteen (15) days before the Tax Return is due; (iv) prior to the filing thereof, the Sellers shall reimburse the Purchaser the amount shown to be due on the final version of any such Tax Return that is in excess of any amounts previously paid by the Sellers in respect of such liability for Taxes by way of estimated Tax payments or otherwise; and (v) past practice does not violate the respective Legal Requirement.

Sec. 8.

## FURTHER ACTIONS AND OBLIGATIONS

## 8.1 Actions at Closing

8.1.1. Seller 1 has accepted the appointment as a member of the board of directors of Dynamic Materials, effective as of the Closing Date.

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- **8.1.2.** Each of Seller 1, 2 and 3 have entered into service agreements with DYNA GmbH or an affiliate of Purchaser. Copies of such service agreements are enclosed as Annex 8.1.2.
- **8.1.3.** [Intentionally Omitted.]
- 8.1.4. The Parties agree that Seller 4 shall pay to Purchaser the amount equal to any and all business taxes *Gewerbesteuer*) that become due and payable for the Company in connection with the sale and assignment of KG-Interest 4 to the Purchaser by the Seller 4. The Parties agreed on a preliminary business tax amount of EUR 2,530,000 (Euro two million five hundred thirty thousand) (the "Preliminary Business Tax Amount") that is to be deducted from the Purchase Price to be paid by Purchaser to Seller 4 pursuant to Section 3.1.1. The final business tax amount will be the business tax liability that shall be borne by the Company in accordance with the Contemplated Transaction finally assessed by a finally binding and non-appealable (formell und materiell bestandkräftig) tax bill or court decision (the "Final Business Tax Amount"). Immediately after the assessment of the Final Business Tax Amount, Seller 4 shall promptly pay to the Purchaser the amount, if any, by which the Final Business Tax Amount exceeds the Preliminary Business Tax Amount, and the Purchaser shall promptly pay to Seller 4 the amount, if any, by which the final Business Tax Amount is less than the Preliminary Business Tax Amount. Seller 4 shall have the rights provided in Section 5.4 with respect to determination of the Final Business Tax Amount.
- **8.1.5.** The Sellers and Purchaser herewith agree that the Sellers indemnify and hold harmless *freistellen*) the DYNA Group Companies from any and all obligations vis-à-vis all advisors (in particular but not limited to financial, tax and legal advisors) for their services rendered in connection with the Contemplated Transaction, if any.
- **8.1.6.** The Sellers shall take all actions in connection with consummation of the Contemplated Transactions, and deliver all certificates, opinions, instruments, and other documents required to effect the Contemplated Transactions in form and substance satisfactory to Purchaser if legally possible.

Sec. 9

## INDEMNIFICATION FOR SOLE OPERATING AND RETRANSFER OBLIGATION

## 9.1 Indemnification for Sole Operating

The Sellers shall, as partial debtors (Teilschuldner) as further specified under Section 5.1,

indemnify and hold harmless the Purchaser and upon request of the Purchaser any DYNA Group Company from any Exercise Event claim as well as any costs and expenses incurred in connection with an Exercise Event. The indemnification pursuant to this Section 9.1 shall not apply if the claim exists solely due to the fact that the Company changed its operation compared to the operations as presently conducted. The burden of proof for the fact that the Company did not change its business is with the Purchaser if (i) an alleged Exercise Event claim is based on the facts that the Company changed its operations and (ii) in the event the Sellers 1 through 3 ceased to be managing director of the Company or DYNA GmbH.

#### 9.2 Exercise Event

"Exercise Event" means any exercise of any of the rights that Orica Germany GmbH has under that certain Sole Permitted Operator Agreement concluded between Dynamit Nobel GmbH Explosivstoff- und Systemtechnik GmbH and Orica Germany GmbH on 1 March 2001, as a consequence of which any of the DYNA Group Companies, within five (5) years following the Closing, (i) is obligated, pursuant to the terms of the Sole Permitted Operating Agreement, fully or partially to leave the production site in Troisdorf, or (ii) is not permitted to conduct its Business as conducted at the respective point in time beyond 1 March 2011. A copy of the Sole Permitted Operating Agreement is attached for identification purposes in Annex 9.7.

#### 9.3 Indemnification for Retransfer Obligation for the Würgendorf Site

The Sellers shall, as partial debtors (*Teilschuldner*) as further specified under <u>Section 5.1</u>, hereby indemnify and hold harmless the Purchaser and, upon request of the Purchaser, any DYNA Group Company from any retransfer obligation by the Company regarding a portion of the real estate in Würgendorf pursuant to Section 7.9(b) of the purchase agreement regarding the sale of the Dynawell and Dynaplat business (notarial deed No. 2001/174 of Notary Dr. Werner Wenger, Basel, Switzerland) (the "APA").

#### 9.4 Coverage of Indemnification

The indemnifications of Sections 9.1 and 9.3 shall also cover all Losses, including actual damages incurred by the Exercise Event and / or the satisfaction of the retransfer obligation pursuant to Section 9.3 and, in particular, any consequential damages (Folgeschäden) and any loss of profits (entgangener Gewinn); provided, however, the limitations pursuant to Sections 5.2.1, 5.4 and 5.5 shall apply accordingly.

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#### 9.5 Limitations

Any claims of the Purchaser under this Section 9 shall be time-barred (verjähren) on 30 June 2015.

#### 9.6 Payments

Any payment to be made under this Section 9 by the Sellers shall become payable ten (10) Business Days after the Sellers have received from the Purchaser a notification in writing stating the amount of the Losses.

Any payments by the Sellers to the Purchaser under this Section 9 shall be regarded as a reduction of the Purchase Price. For the sake of clarity, the indemnifications pursuant to this Section 9 shall be satisfied (i) first by transfer of shares or cash, out of the Hold Back from the Sellers to the Purchaser, if possible, and (ii) next, in the event the claims of the Purchaser exceed the value of the Hold Back or the Hold Back has been released, by delivery of any of the Stock Consideration (not currently in the Hold Back) or cash.

Sec. 10.

#### COVENANTS

#### 10.1 Seller Covenants

- 10.1.1. No Seller will take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of any of the DYNA Group Companies from maintaining the same business relationships with any of the DYNA Group Companies after the Closing as it maintained with such DYNA Group Companies of which he or it is aware.
- 10.1.2. Between the Closing Date and the time of registration of Purchaser as limited partner of the Company by virtue of a special succession *Conderrechtsnachfolge*) with the Commercial Register (the "Registration Date"), to the extent permissible under applicable Legal Requirements, the Sellers shall, and shall cause each of the DYNA Group Companies to, and where this is impossible, use their best efforts to shall cause each of the DYNA Group Companies to (i) conduct its business operations in the ordinary course of business and substantially in the same manner as before except as set forth in <u>Annex 10.1.2</u>; (ii) subject to the satisfaction of the condition precedent under Section 2.2.6 sentence 1 act or refrain from acting, as applicable, in order to comply

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with the covenants and prevent a breach of any representations and warranties applicable to subsidiaries of Dynamic Materials under that certain credit agreement, with JPMorgan Chase Bank, N.A. and such lenders to which Purchaser is a credit party and (iii) except as otherwise agreed to by the Purchaser in writing, use all reasonable efforts to preserve the relationship with its employees and consultants and to preserve intact its current relationships with such of its customers, suppliers, and other persons with which it has significant business relations. Between the Closing Date and the Registration Date, Section 4.17 shall apply mutatis mutandis with no adjustment to the related Annexes except as otherwise agreed to by the Purchaser in writing. Sellers and Purchaser agree that as of the satisfaction of the condition precedent pursuant to Section 2.2.6 sentence 1 the Sellers shall act and behave in such manner as if the KG-Interests and the GmbH-Shares had already been validly assigned.

#### 10.2 Dynamic Materials Covenants

Dynamic Materials will use its best efforts to ensure that the DMC Common Stock held by the Sellers will be registered with Nasdaq or a similar stock exchange where DMC stock is registered for trading by and including 31 December 2008. As soon as reasonably possible, but no later than 30 April 2008, Dynamic Materials shall file with the U.S. Securities and Exchange Commission ("SEC") a registration statement to permit the Sellers to freely sell all of the shares of DMC Common Stock held by the Sellers following the date such shares are no longer subject to the transfer restrictions of Section 3.2. Dynamic Materials will provide Sellers with a copy of the registration statement and any amendments thereto. Dynamic Materials will use its best efforts and guarantees (by way of an independent guarantee pursuant to Sec. 311 German Civil Code) to Sellers that it will undertake all costs and expenses necessary to register such shares under the Securities Laws pursuant to standard terms and conditions to permit them to be freely tradeable by the Sellers. In the event Dynamic Materials becomes aware of any planned delisting of DMC Common Stock, Dynamic Materials will use its best efforts and guarantees (by way of an independent guarantee pursuant to Sec. 311 German Civil Code) to Sellers, that it will undertake all costs and expenses necessary to register

such shares under the Securities Laws pursuant to standard terms and conditions to permit them to be freely tradeable by the Sellers immediately after such earlier date. In the event that Dynamic Materials becomes aware of any planned delisting of DMC Common Stock, Dynamic Materials will promptly inform the Sellers.

#### 10.3 Mutual Covenants

10.3.1. If at any time after the Closing any further actions are necessary or desirable to carry

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out the purposes of this Agreement, each of the Parties will take such further actions (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the sole cost and expense of the requesting Party. The Sellers acknowledge and agree that from and after the Closing, the Purchaser will be entitled to copies of all documents, books, contracts, records (including Tax records), agreements and financial data of any sort relating to the DYNA Group Companies.

10.3.2. In the event and for so long as any Party actively is contesting or defending against any Proceeding in connection with (i) any Contemplated Transaction or (ii) any alleged fact, action, or other event, involving the DYNA Group Companies, each of the Parties will use its best efforts to cooperate with it and its counsel in the contest or defense, make available his or its personnel, and provide such testimony and access to his or its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party.

Sec. 11.

#### NON-COMPETITION CLAUSE

#### 11.1 Non-Compete Covenant

11.1.1. For a period of five (5) years after the Closing Date, the respective Sellers and Mr. Mertens shall not, either directly or indirectly, engage in the Geographical Markets in any competition to the Business as presently conducted (herein referred to as "Competitive Activities"), or directly or indirectly manage, assist or acquire any interest (equity or votes) in any companies conducting any Competitive Activities (except the acquisition of shares of the DMC Common Stock as outlined above and except any activity the Sellers or any of them will conduct for any of the DYNA Group Company in accord with the Purchaser). "Geographical Markets" herein shall mean the markets in which DYNA Group Companies are currently active in the Business or have been themselves directly (including via direct participations in consortiums or other co-operations) active in the Business in the last five (5) years before the Closing Date. The obligations of this Section 11.1.1 shall terminate as to Mr. Mertens (i) in respect to certain regions, upon the termination of an agreement disclosed in Annex 11.1.1-1 relating to such region, in which ANKO Industry Service GmbH was obliged to provide services under the respective agreement terminated, and (ii) in respect to certain clients, upon the full or partly termination of the provision agreement disclosed

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in Annex 11.1.1-2 relating to such clients, for which the payment of provisions according that provision agreement is terminated.

11.1.2. The Sellers acknowledge and agree that the value to the Purchaser of the transactions contemplated by this Agreement would be substantially and materially diminished if any of the Sellers, directly or indirectly, were to breach any of the provisions of this Section 11.1, and the Sellers have therefore agreed to the provisions of this Section 11.1 as a material inducement to the Purchaser to enter into this Agreement. The Sellers specifically acknowledge and agree that the provisions of this Section 11.1 are commercially reasonable restraints in accordance with common market practice, which in light of the investment, effort and risk to acquire hereunder and thereafter operate the business of the DYNA Group Companies are reasonably necessary to protect the value of the DYNA Group Companies and their Business. The Sellers acknowledge and agree that the Purchaser could be irreparably damaged by a breach of this Section 11.1 and would not be adequately compensated by monetary damages for any such breach and thus shall also be entitled to injunctive relief.

## 11.2 Non-Solicitation Covenant

- 11.2.1. For a period of five (5) years after the Closing Date, the respective Sellers shall not solicit or entice away from any of the DYNA Group Companies any person who presently or during such period is employed by any of the DYNA Group Companies.
- 11.2.2. For a period of five (5) years after the Closing Date, the respective Sellers shall not solicit any clients or customers of any of the DYNA Group Companies or endeavour to entice away from any DYNA Group Companies any person who is or has been a client or customer of any of the DYNA Group Companies.

## 11.3 Minority Participation in Listed Companies

Any direct or indirect participations in listed companies shall be excluded from the non-compete provisions under Section 11.1, as long as the percentage of the participation of the Sellers and any current or future companies of the Sellers' does not exceed five percent (5%) of the respective listed companies and the participation is for investment purposes only (i.e., the mere holding of shares).

#### 11.4 Liquidated Damages

If the Sellers do not comply with any of the provisions of this  $\underline{\text{Section 11.1}}$  through  $\underline{\text{11.3}}$ , such

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Seller shall be liable to the Purchaser for payment of liquidated damages (pauschalierter Schadensersatz) in the amount of EUR 2,000,000 (Euro two million) for each case of non-compliance. The Purchaser is entitled to claim actual damages (Schadensersatzansprüche) that exceed the Liquidated Damages with respect to such non-compliance. The Sellers are entitled to prove, that the actual damages of the Purchaser in respect to such non-compliance are less than EUR 2,000,000 (Euro two million).

#### 12.1 Confidentiality; Press Releases; Public Disclosure

The Parties understand a copy of this Agreement will be filed publicly with the SEC. The Parties may make press releases or other public announcements concerning the transactions contemplated by this Agreement only after having consulted and discussed the press release or other public announcements with the other Parties.

Sec. 13.

#### COSTS AND TAXES

#### 13.1 Taxes and fees

The costs for the notarization of (i) this Agreement and (ii) completion of the Contemplated Transactions shall be borne by Purchaser. Purchaser shall pay any real estate transfer taxes incurred in connection with the Contemplated Transactions.

#### 13.2 Costs

Each Party shall bear its own costs and expenses (including financial advisory fees and legal fees and expenses) incurred in connection with the Transaction Documents and the Contemplated Transactions. In the event of any dispute related to or based upon this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs.

Sec. 14.

#### MISCELLANEOUS

## 14.1 Assignment; Successors and Assigns

This Agreement and any rights and obligations hereunder may not be assigned or transferred, in whole or in part, without the prior written consent of the other Parties hereto; provided, however, that each or either of Purchaser and Dynamic Materials may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates; (ii) designate one or more of its Affiliates to

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perform its obligations hereunder (in any or all of which cases Purchaser nonetheless shall remain responsible for the performance of all of its obligations hereunder); and (iii) assign any or all of its rights and interests hereunder, including its rights to indemnification, to JPMorgan Chase Bank, N.A. (including, without limitation, JPMorgan Chase Bank, N.A., as administrative agent, J.P. Morgan Europe Limited, as administrative agent, and JPMorgan Securities Inc., as sole bookrunner and lead arranger), or its successor in interest from time to time, on behalf of the lenders from time to time under that certain credit agreement, with JPMorgan Chase Bank, N.A. and such lenders to which Purchaser is a credit party, or any of its Affiliates as collateral security. All of the terms and provisions of this Agreement shall be binding on, and shall inure to the benefit of, the respective heirs, administrators, personal representatives, successors and permitted assigns, as applicable, of the Parties.

#### 14.2 Notices

All notices and other communications hereunder ("**Notices**") shall be in writing in the English language and shall be deemed to have been duly given and received when delivered in person or received by telegraphic or other electronic means (including facsimile, telecopy and e-mail) with confirmation of transmission by the transmitting equipment or when delivered by overnight courier, or if mailed, five days after being deposited in the mail, certified or registered mail, first-class postage prepaid, return receipt requested, to the Parties at the addresses or facsimile numbers set forth in <u>Annex 14.2</u>.

Any Party from time to time may change its physical address, e-mail address or facsimile number for the purpose of receipt of notices to that Party hereunder by giving notice specifying a new physical address, e-mail address or facsimile number to the other persons listed above in accordance with the provisions of this Section 14.2, which will not constitute an amendment under Section 14.6. The receipt of copies of Notices by the Parties' advisors shall not constitute or substitute the receipt of such Notices by the Parties themselves. Any Notice shall be deemed received by a Party regardless of whether any copy of such Notice has been sent to or received by an advisor of such Party or the acting notary, irrespective of whether the delivery of such copy was mandated by this Agreement.

#### 14.3 Governing Law

This Agreement shall be governed by and construed in accordance with, the laws of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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#### 14.4 Venue for Disputes

The venue for any disputes arising out of this Agreement or any of its Annexes shall be, unless provided for otherwise by mandatory statutory provisions, the District Court of Frankfurt am Main (*Landgericht Frankfurt am Main*).

#### 14.5 Business Day

Heretofore and hereinafter, "Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in Frankfurt am Main, Germany.

#### 14.6 Amendments: Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party, except where a stricter form (e.g., notarization) is required under applicable Legal Requirements. This also applies for a waiver or amendment of this form requirement.

#### 14.7 Language

- **14.7.1.** This Agreement is written in the English language (except that Annexes may be partly in the German language). Terms to which a German translation has been added shall be interpreted throughout this Agreement in the meaning assigned to them by the German translation
- 14.7.2. Any reference made in this Agreement to any types of companies or participations, Proceedings, authorities or other bodies, rights, institutions, regulations or legal relationships (the "Legal Terms") under German law shall extend to any corresponding or identical Legal Terms under foreign law to the extent that relevant facts

and circumstances must be assessed under such foreign law. Where no corresponding or identical Legal Term under foreign law exists, such Legal Terms shall be introduced that functionally come closest to the Legal Terms under German Law.

#### 14.8 Headings; Construction

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any Legal Requirement shall be deemed also to refer to all rules and regulations promulgated thereunder, as amended from time to time, unless the context requires otherwise.

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#### 14.9 Entire Agreement

Except as otherwise set forth herein, the Annexes identified in this Agreement are incorporated herein by reference and made a part hereof unless attached for identification purposes only. The Transaction Documents (including the other documents expressly referred to herein and therein) constitute the entire agreement among the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof. Side agreements to this Agreement do not exist.

#### 14.10 Severability

Should any provision of this Agreement be or become invalid, ineffective or unenforceable as a whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and the purpose of such invalid, ineffective or unenforceable provision as regards subject-matter, amount, time, place and extent. The aforesaid shall apply *mutatis mutandis* to any gap in this Agreement.

#### 14.11 Interpretation of Disclosure Schedule

If there is any inconsistency between the statements in this Agreement and those in the disclosure schedule (other than an exception expressly set forth as such in the disclosure schedule with respect to a specifically identified representation or warranty), the statements in this Agreement will control. The statements in the disclosure schedule, except as provided in Section 5.7, relate only to the provisions in the Section of this Agreement to which they expressly relate, including by express cross-reference to numbered and lettered sections in the disclosure schedule, and not to any other provision in this Agreement.

#### 14.12 No Benefit to Others

Except as expressly set forth herein, the representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and their respective heirs, administrators, personal representatives, successors and permitted assigns, and they shall not be construed as conferring and are not intended to confer any rights, remedies, obligations, or liabilities on any other person, unless such person is expressly stated herein to be entitled to any such right, remedy, obligation, or liability.

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#### 14.13 This Deed Conditional

This Agreement is subject to the condition precedent that the parties hereto agree in a separate notarial deed on the Annexes, which are not contained in the Reference Deed or this Deed.

(continued on next page)

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IN WITNESS THEREOF this Notarial Deed including the Annex thereto has been read aloud to the persons appearing and was confirmed and approved by the persons appearing. The persons appearing then signed this Deed. All this was done at the day herebelow written in the presence of me, the Notary Public, who also signed this Deed and affixed my official Seal.

Basel, this 15<sup>th</sup> (fifteenth) day of November 2007 (two thousand and seven).

/s/ Rolf Rospek
/s/ Tobias Kordes
/s/ Patrick Xylander
/s/ Volker Mertens
/s/ Christian Becker
/s/ Stephen Cueni
Stephen Cueni, Notary Public

In this Agreement, including the recitals and schedules hereto, the following words and phrases have the following meanings:

- "1306735 Alberta" shall have the meaning ascribed to it in the Recitals.
- "4391438 Canada" shall have the meaning ascribed to it in the Recitals.
- "Agreement" shall have the meaning ascribed to it in the preface.
- "Assignments" shall have the meaning ascribed to it in Section 2.2.4.
- "Business" shall have the meaning ascribed to it in the Recitals.
- "Business Day" shall have the meaning ascribed to it in Section 14.5.
- "Calculation Date" shall mean 30 September 2007.
- "Closing" shall mean the closing of the transactions contemplated by this Agreement.
- "Closing Date" shall mean 15 November 2007, or such other date as may be agreed to by the Parties.
- "Company" shall have the meaning ascribed to it in the Recitals.
- "Companies' Shares" shall have the meaning ascribed to it in the Recitals.
- "Competitive Activities" shall have the meaning ascribed to it in Section 11.1.1.
- "Contemplated Transactions" shall have the meaning ascribed to it in Section 4.1.1.
- "Contractual Effective Date" shall have the meaning ascribed to it in Section 2.1.
- "De Minimis Amount" shall have the meaning ascribed to it in Section 5.3.
- "Disclosure Schedule" shall mean the disclosure schedules with respect to Section 4 prepared by the Sellers and delivered by the Sellers to Purchaser on the date of this Agreement.
- "DMC Common Stock" shall have the meaning ascribed to it in Section 3.1.2.
- "DYNAenergetics RUS" shall have the meaning ascribed to it in the Recitals.
- "DYNA-Assets" shall have the meaning ascribed to it in Section 4.7.1.
- "DYNA GmbH" shall have the meaning ascribed to it in the Recitals.
- "DYNA Group" shall have the meaning ascribed to it in the Recitals.
- "DYNA Group Company(ies)" shall have the meaning ascribed to it in the Recitals.
- "Dynamic Materials" shall have the meaning ascribed to it in the Recitals.
- "Employee(s)" shall have the meaning ascribed to it in Section 4.11.2.
- "Environmental, Health and Safety Laws" means all applicable Legal Requirements and technical standards and accepted codes of conduct relating to Environmental, Health and Safety Matters and being applicable before or as of the Closing Date in the jurisdiction in which any of the DYNA Group Companies conducts its business or as otherwise applicable from time to time.
- "Environmental, Health and Safety Liabilities" means, all Losses reasonably incurred in

connection with (i) an investigation in connection with or in anticipation of a remediation of an Existing Environmental Condition, (ii) a clean-up of an Existing Environmental Condition, (iii) securing measures or protective containment measures, relating in each case to an Existing Environmental Condition, (iv) measures to eliminate, reduce or otherwise remedy a danger to well-being or health resulting from an Existing Environmental Condition or (v) the failure to obtain or comply with any Governmental consents required under any Environmental, Health and Safety Laws authorizing the construction or modification of a facility or comply with any Environmental, Health and Safety Laws.

- "Environmental, Health and Safety Matters" means any matter concerning worker health or safety, public health or safety, product or materials safety, pollution, contamination, replacement, renewal or protection of the soil, air, ground water, surface water, land surface and natural resources, including buildings and other man-made structures and third-party properties.
- "Escrow Agreement" shall have the meaning ascribed to it in Section 3.1.3.
- "Exchange Act" shall mean the U.S. Securities Exchange Act of 1934.
- "Exercise Event" shall have the meaning ascribed to it in Section 9.2.
- "Existing Environmental Condition" means (i) the presence on or prior to the Closing Date of pollution or contamination, or any other adverse condition (including, without limitation, the presence of Hazardous Materials) in either the soil, groundwater and all buildings thereon, of the Real Property and any other real property owned or used by the DYNA Group Companies prior to the Closing Date (herein collectively "Environmental Real Properties"), (ii) the presence on or prior to the Closing Date of Hazardous Materials in the soil, groundwater, surface water or natural resources, beneath, on, at or above, the Environmental Real Properties, and/or, whether on or prior to or after the Closing Date, the migration of such Hazardous Materials from the Environmental Real Properties, or (iii) the disposal of any Hazardous Materials used, handled, transported, disposed, deposited, generated or stored by or on behalf of the Company, DYNA GmbH or, to Sellers' Knowledge, the Operating Subsidiaries on or prior to the Closing Date at any offsite location. There shall be the presumption that any Environmental, Health and Safety Matter newly discovered within six (6) months after the Closing Date is attributable to operations occurring on or prior to the Closing Date, unless the Sellers can demonstrate that such Environmental, Health and Safety Matter is attributable to

major operations that occurred after the Closing Date, provided that (i) the Sellers 1 through 3 remain during this six (6) month period managing directors of the Company or DYNA GmbH and (ii) the Sellers 1 through 3 in this function are in the position to have influence on the relevant business activities.

- "Final Business Tax Amount" shall have the meaning ascribed to it in Section 8.1.4.
- "Financial Statements" shall have the meaning ascribed to it in Section 4.6.1.
- "Geographical Markets" shall have the meaning ascribed to it in Section 11.1.1.
- "GmbH-Share 1" shall have the meaning ascribed to it in the Recitals.
- "GmbH-Share 2" shall have the meaning ascribed to it in the Recitals.
- "GmbH-Share 3" shall have the meaning ascribed to it in the Recitals.
- "GmbH-Share 4" shall have the meaning ascribed to it in the Recitals.
- "GmbH-Shares" shall have the meaning ascribed to it in the Recitals.
- "Governmental Permits" shall have the meaning ascribed to it in Section 4.9.1.
- "Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature that are regulated by Environmental, Health and Safety Laws.
- "Hold Back" shall have the meaning ascribed to it in Section 3.1.3.
- "Information" shall have the meaning ascribed to it in Section 4.16.
- "Information Technology" shall have the meaning ascribed to it in Section 4.15.
- "Intellectual Property Rights" shall have the meaning ascribed to it in Section 4.8.1.
- "Interests" shall have the meaning ascribed to it in Section 4.5.9.
- "KAZ DYNAenergetics" shall have the meaning ascribed to it in the Recitals.
- "KG-Interest 1" shall have the meaning ascribed to it in the Recitals.
- "KG-Interest 2" shall have the meaning ascribed to it in the Recitals.
- "KG-Interest 3" shall have the meaning ascribed to it in the Recitals.
- "KG-Interest 4" shall have the meaning ascribed to it in the Recitals.
- "KG-Interest" shall have the meaning ascribed to it in the Recitals.
- "Legal Requirement" means any national, regional, local or foreign statute, law, code, ordinance, rule, regulation, resolution, judgment, writ, order, decree, injunction, award, restraining order or ruling by any court, judge, justice, arbitrator or magistrate or any other governmental authority, regulatory agreement with any governmental authority or general principle of common or civil law or equity.
- "Legal Terms" shall have the meaning ascribed to it in Section 14.7.2.
- "Lien" means any transfer, mortgage, option, pledge, encumbrance and/or other disposal rights (Verfüguengen) including agreements on transfer, mortgage, option, pledge, encumbrance and/or other disposal.
- "Limited Partnership Capital Interest' shall have the meaning ascribed to it in the Recitals.
- "Losses" shall mean any obligations, liabilities, losses (including any direct or indirect reduction in value of the participation in the DYNA Group Companies), costs and expenses and other damages.
- "Management Report" shall have the meaning ascribed to it in Section 4.6.1.
- "Material Adverse Change" shall have the meaning ascribed to it in Section 4.17.
- "Material Agreement(s)" shall have the meaning ascribed to it in Section 4.10.1.
- "Nasdaq" shall mean the NASDAQ Stock Market.
- "Notice of Objection" shall have the meaning ascribed to it in Section 7.2.2.
- "Notices" shall have the meaning ascribed to it in Section 14.2.
- "Operating Subsidiar(y)(ies)" shall have the meaning ascribed to it in the Recitals.
- "Order" means any order, judgment or injunction made, entered or rendered by any court, administrative agency or other Governmental Authority, or by any arbitrator.
- "Partner Loan Claim 1" shall have the meaning ascribed to it in the Recitals.

- "Partner Loan Claim 2" shall have the meaning ascribed to it in the Recitals.
- "Partner Loan Claim 3" shall have the meaning ascribed to it in the Recitals.
- "Partner Loan Claim 4" shall have the meaning ascribed to it in the Recitals.
- "Partners' Loan Claims" shall have the meaning ascribed to in the Recitals.
- "Perfoline" shall have the meaning ascribed to it in the Recitals.
- "Pre-Closing Date Period" shall mean any period or portion of it ending on or before the Closing Date.
- "Pre-Calculation Date Taxes" shall mean any Taxes related to actions, events, periods or portions of periods ending on or before the Calculation Date.
- "Preliminary Business Tax Amount" shall have the meaning ascribed to it in Section 8.1.4.
- "Proceeding" means any action, claim, litigation, arbitration, proceeding (including any civil, criminal, administrative proceeding), prosecution, charge or dispute commenced by or before, or otherwise involving, any governmental body or arbitrator.
- "Purchase Price" shall have the meaning ascribed to it in Section 3.1.1.
- "Purchaser" shall have the meaning ascribed to it in the preface.
- "Real Property" shall have the meaning ascribed to it in Section 4.7.3.
- "Registration Date" shall have the meaning ascribed to it in Section 10.1.2.
- "Registered Share Capital" shall have the meaning ascribed to it in the Recitals.
- "SEC" shall have the meaning ascribed to it in Section 10.2.
- "Securities Act" shall mean the U.S. Securities Act of 1933.
- "Securities Laws" shall mean the Securities Act together with the Exchange Act.
- "Seller(s)" shall have the meaning ascribed to it in the preface.
- "Seller 1" shall have the meaning ascribed to it in the preface.
- "Seller 2" shall have the meaning ascribed to it in the preface.
- "Seller 3" shall have the meaning ascribed to it in the preface.
- "Seller 4" shall have the meaning ascribed to it in the preface.
- "Sellers' Knowledge" shall have the meaning ascribed to it in Section 4.
- "Shareholder Loan Claim 1" shall have the meaning ascribed to it in the Recitals.
- "Shareholder Loan Claim 2" shall have the meaning ascribed to it in the Recitals.
- "Shareholder Loan Claim 3" shall have the meaning ascribed to it in the Recitals.
- "Shareholder Loan Claim 4" shall have the meaning ascribed to it in the Recitals.
- "Shareholders' Loan Claims" shall have the meaning ascribed to in the Recitals.
- "Signing Date" shall mean the date hereof.
- "Statutory Auditor" shall mean Sozietät Prinz & Mueller.
- "Stock Consideration" shall have the meaning ascribed to it in Section 3.1.2.
- "Subsidiary(-ies)" shall have the meaning ascribed to it in the Recitals.
- "Tax Benefit" shall mean any present or future decrease of an assessed Tax.
- "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes.
- "Taxes" shall mean all taxes (including, without limitation, taxes on income, profits and gains, payroll and withholding taxes, real estate transfer taxes, VAT and other levies), duties, charges (including, without limitation, labor insurance and social security charges), public contributions, arrears, advance payments, liabilities stamps and imposts of whatever nature imposed by any tax, governmental body or other authority, together with any interest, penalty, fine, supplement, surcharge or addition thereto and all penalties for incorrect transfer pricing documentation. For the avoidance of doubt, the term Taxes shall also include any liabilities for Taxes (*Haftungsbeträge*) as well as reductions of Tax losses or potential write-offs.
- "Threshold" shall have the meaning ascribed to it in Section 5.3.
- "Transfer Restrictions" shall have the meaning ascribed to it in Section 3.2.
- "Transaction Documents" shall have the meaning ascribed to it in Section 4.1.1.

"Troisdorf GHG" shall have the meaning ascribed to it in the Recitals.

 $\label{prop:continuous} \textbf{``W\"{u}rgendorf~GHG''} \ \text{shall have the meaning ascribed to it in the Recitals}.$ 

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\$25,000,000 Revolving Loan \$45,000,000 Term Loan €14,000,000 Euro Term Loan €7,000,000 Euro Revolving Loan

## CREDIT AGREEMENT

dated as of

November 16, 2007

among

## DYNAMIC MATERIALS CORPORATION, DYNAMIC MATERIALS LUXEMBOURG 2 S. Â R.L.,

The Guarantors Party Hereto,

The Lenders Party Hereto,

## JPMORGAN CHASE BANK, N.A.

as Administrative Agent

for the Revolving Credit Lenders and the Term Lenders

## J.P.MORGAN EUROPE LIMITED,

as Administrative Agent for the Euro Revolving Credit Lenders and the Euro Term Lenders

and

JPMORGAN SECURITIES INC., as Sole Bookrunner and Lead Arranger

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### EXHIBITS:

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Exhibit 1.1B(i)		_	Form of Joinder Agreement (Domestic) (Section 1.01)
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Exhibit 1.1C(i)		_	Form of Security Agreement (US Borrower) (Section 1.01)
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CREDIT AGREEMENT dated as of November 16, 2007 (this "Agreement"), among Dynamic Materials Corporation, a Delaware corporation (the "US Borrower", or sometimes referred to as the "Parent"), Dynamic Materials Luxembourg 2 S.à r.l., a private limited liability company (société à responsabilité limitée), incorporated and existing under the laws of the Grand-Duchy of Luxembourg, with registered office at 41, boulevard Prince Henri, L-1724 Luxembourg, Grand-Duchy of Luxembourg, in the process of registration with the Luxembourg trade and companies register (Registre de Commerce et des Sociétés Luxembourg) and a Subsidiary of the Parent (the "Euro Borrower," and, together with the US Borrower, the "Borrowers"), the Guarantors party hereto, the Lenders party hereto, JPMorgan Chase Bank, N.A., as Administrative Agent for the Revolving Credit Lenders and the Term Lenders, J.P. Morgan Europe Limited, as Administrative Agent for the Euro Revolving Credit Lenders and the Euro Term Lenders and JPMorgan Securities Inc., as Sole Bookrunner and Lead Arranger (the "Arranger").

## PRELIMINARY STATEMENT:

The US Borrower has requested that the Lenders provide the Borrowers with a credit facility pursuant to which the Lenders will commit to make revolving credit loans up to \$25,000,000, a term loan of \$45,000,000 Euro term loan and a  $\epsilon$ 7,000,000 Euro revolving credit loan.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, the Borrowers, Guarantors, the Administrative Agent and the Lenders agree as follows:

ARTICLE I Definitions "ABR", when used in reference to any Revolving or Term Loan or Borrowing in dollars, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acquisition" means the indirect acquisition by the US Borrower of the Target pursuant to the Acquisition Agreement.

"Acquisition Agreement" means the Purchase, Sale and Assignment Agreement to be dated on or about November , 2007, among the sellers named therein, Blitz F07-dreihundert-vierzehn GmbH (in the future: DYNAenergetics Holding GmbH) ("DYNAenergetics Holding GmbH"), as purchaser, and the US Borrower, as purchaser guarantor, which agreement is in form and substance reasonably acceptable to the Administrative Agent.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMorgan Chase Bank, N.A. in its capacity as administrative agent for the Revolving Credit Lenders and the Term Lenders hereunder.

"Administrative Agents" means the Administrative Agent and the Euro Administrative Agent.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Excess Cash Flow Amount" has the meaning set forth in Section 2.11(b).

"Agreement" has the meaning set forth in the introductory paragraph hereof.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect on such day plus ½ of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate, respectively.

"Applicable Margin" means, on any day, the applicable per annum percentage set forth at the appropriate intersection in the table shown below, based on the Leverage Ratio for the most recently ended trailing four-quarter period with respect to which the US Borrower is required to have delivered the financial statements pursuant to Section 5.01(a) or Section 5.01(b), as applicable (said calculation to be made by the Administrative Agent as soon as practicable after receipt by the Administrative Agent of all required financial statements for the applicable period):

	Eurocurrency/	
Leverage Ratio	Eurodollar Margin	ABR Margin
X > 2.00	2.00 %	0.50 %
$2.00 \ge X > 1.50$	1.75 %	0.25 %
$1.50 \ge X > 1.00$	1.50 %	0.00%
$1.00 \ge X$	1.25 %	0.0%

Each change in the Applicable Margin shall take effect on each date on which such financial statements are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as

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applicable, commencing with the date on which such financials statements are required to be delivered for the trailing four-quarter period ending September 30, 2007. Notwithstanding the foregoing, for the period from the Closing Date through receipt of financial statements pursuant to Section 5.01(b) for the fiscal quarter ended March 31, 2008, the Eurocurrency/Eurodollar Margin will be 1.75 and the ABR Margin will be 0.25. In the event that any financial statement delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable, is shown to be inaccurate when delivered (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, and only in such case, then the US Borrower shall immediately (i) deliver to the Administrative Agent corrected financial statements for such Applicable Period, (ii) determine the Applicable Margin for such Applicable Period financial statements, and (iii) immediately pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 2.18. This provision is in addition to rights of the Administrative Agents and Lenders with respect to Section 2.13(f) and their other respective rights under this Agreement.

"Applicable Percentage" means, with respect to any Revolving Credit Lender, the percentage of the total Revolving Loan Commitments represented by such Revolving Credit Lender's Revolving Loan Commitment. If the Revolving Loan Commitments have terminated or expired pursuant to this Agreement, the Applicable Percentages shall be determined based upon the Revolving Loan Commitments most recently in effect, giving effect to any assignments pursuant to this Agreement.

"Approved Fund" has the meaning assigned to such term in Section 10.04(b).

"Assessment Rate" means, for any day, the annual assessment rate in effect on such day that is payable by a member of the Bank Insurance Fund classified as "well-capitalized" and within supervisory subgroup "B" (or a comparable successor risk classification) within the meaning of 12 C.F.R. Part 327 (or any successor provision) to the Federal Deposit Insurance Corporation for insurance by such Corporation of time deposits made in dollars at the offices of such member in the United States; provided that if, as a result of any change in any Law, it is no longer possible to determine the Assessment Rate as aforesaid, then the Assessment Rate shall be such annual rate as shall be determined by the Administrative Agent to be representative of the cost of such insurance to the Lenders.

"Asset Sale" means a Disposition by any Borrower or any of its respective Subsidiaries to any Person of (a) substantially all of the assets, or any material division or line of business, of such Borrower or any such Subsidiary, or (b) any other assets of such Borrower or any such Subsidiary, including, without limitation, any accounts receivable, but excluding in each case of clause (a) and (b) above the Dispositions permitted in Section 6.04.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by

Section 10.04), and accepted by the Administrative Agents, as applicable, in the form of Exhibit 1.1A or any other form approved by the Administrative Agent and the US Borrower.

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Revolving Credit Termination Date and the date of termination of the Revolving Loan Commitments.

"Base CD Rate" means the sum of (a) the Three-Month Secondary CD Rate multiplied by the Statutory Reserve Rate plus (b) the Assessment Rate.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrowers" has the meaning given in the preamble.

"Borrowing" means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, (b) Term Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, (c) Euro Revolving Loans of the same Type, made, converted or continued on the same date and as to which a single Interest Period is in effect (d) Euro Term Loans, (e) a Swingline Loan or (f) a Euro Swingline Loan.

"Borrowing Request" means a request by the US Borrower or the Euro Borrower, as applicable, for a Borrowing in accordance with Section 2.03.

"Business Acquisition" means (a) an Investment by any Borrower or any other Person pursuant to which such Person shall become a Subsidiary of such Borrower or shall be merged into or consolidated with such Borrower or any of its Subsidiaries or (b) an acquisition by any Borrower or any of its respective Subsidiaries of the property and assets of any Person that constitute substantially all of the assets of such Person or any division or other business unit of such Person.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York, London, England, Luxembourg and Denver, Colorado are authorized or required by Law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market (and, with respect to any Borrowing, if the Loans which are the subject of such Borrowing are denominated in Euros, shall exclude any day that is not a TARGET Day).

"Capital Expenditures" means, for any period and a specified Person, expenditures in respect of fixed or capital assets, including the capital portion of the lease payments made in respect of Capital Lease Obligations, in each case which are required to be capitalized on a balance sheet of such Person prepared in accordance with GAAP, but excluding expenditures for the repair or replacement of any fixed or capital assets which were destroyed or damaged, in whole or in part, to the extent financed by the proceeds of any insurance policy or expenditures for any fixed or capital assets to the extent financed by the proceeds from the

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issuance of any Equity Interests in the US Borrower or, proportionately, to the extent financed by the proceeds of any issuance of Equity Interests in any Subsidiary of the US Borrower that is not a Wholly Owned Subsidiary to any Person that is not the US Borrower or any of its Subsidiaries.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Casualty Event" means, with respect to any property of any Borrower or any of its respective Subsidiaries, loss of title with respect to such property or any loss of or damage to or destruction of, or any condemnation or other taking of, such property, in each case for which such Borrower or such Subsidiary receives insurance proceeds or proceeds of a condemnation award or other compensation, in each case to the extent that such proceeds or other compensation exceeds \$1,000,000.

"Change in Control" means (a) any Person or group (within the meaning of Rule 13d-5 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 as in effect on the date hereof) shall become the beneficial owner (as defined in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 as in effect on the date hereof) of issued and outstanding Equity Interests of the Parent representing more than 35% of the aggregate voting power in elections for directors of the Parent on a fully diluted basis; or (b) a majority of the members of the board of directors of the Parent shall cease to be either (i) Persons who were members of the board of directors after the Closing Date and whose election or nomination was approved by a vote or consent of the majority of the members of the board of directors that are either described in clause (i) above or who were elected under this clause (ii).

"Change in Law" means (a) the adoption of any Law after the date of this Agreement, (b) any change in any Law or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Lender (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of Law) of any Governmental Authority made or issued after the date of this Agreement.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Term Loans, Swingline Loans, Euro Revolving Loans or Euro Term Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Loan Commitment, a Term Loan Commitment, a Euro Revolving Loan Commitment or a Euro Term Commitment.

"Closing Date" means the date of the initial Loan hereunder.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

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"Collateral" means all of the property described in the Security Agreements serving as security for the Loans.

"Commitment" means any Term Loan Commitment, Revolving Loan Commitment, Euro Revolving Loan Commitment or Euro Term Loan Commitment, as the context may require, and "Commitments" means any or all of the foregoing, as the context may require.

"Commitment Fee Rate" means, on any day, the applicable per annum percentage set forth at the appropriate intersection in the table shown below, based on the Leverage Ratio for the most recently ended trailing four-quarter period with respect to which the US Borrower is required to have delivered the financial statements pursuant to Section 5.01(a) or Section 5.01(b), as applicable (said calculation to be made by the Administrative Agent as soon as practicable after receipt by the Administrative

Agent of all required financial statements for the applicable period):

Leverage Ratio	Commitment Fee Rate
X>2.00	0.375 %
2.00≥X>1.50	0.350%
1.50≥X>1.00	0.300%
1.00≥X	0.250%

Each change in the Commitment Fee Rate shall take effect on each date on which such financial statements are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable, commencing with the date on which such financials statements are required to be delivered for the four-quarter period ending September 30, 2007. Notwithstanding the foregoing, for the period from the Closing Date through receipt of financial statements pursuant to Section 5.01(a) for the fiscal quarter ended March 31, 2008, the Commitment Fee Rate will be 0.35%. In the event any financial statement delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable, is shown to be inaccurate when delivered (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to a higher Commitment Fee Periodtage for any period (as "Applicable Commitment Fee Period") than the Commitment Fee Periodtage applied for such Applicable Commitment Fee Period, and only in such case, then the US Borrower shall immediately (i) deliver to the Administrative Agent corrected financial statements, and (iii) immediately pay to the Administrative Agent the additional accrued commitment fee Period such applicable Commitment Fee Period, which payment shall be promptly applied in accordance with Section 2.11. This provision is in addition to the rights of the Administrative Agents and Lenders with respect to Section 2.12(f) and their other respective rights under this Agreement.

"Consolidated EBITDA" means, for any Person, for any period, Net Income of such Person and its consolidated Subsidiaries determined on a consolidated basis in accordance with GAAP for such period, <u>plus</u>, to the extent deducted in the determination of such Net Income and without duplication, (a) provisions for income taxes, (b) Interest Expense, (c) depreciation

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and amortization expense, (d) extraordinary, non-recurring charges and (e) other non-cash charges; and minus, to the extent included in the determination of such Net Income and without duplication, (i) interest income, (ii) extraordinary, non-recurring income, revenue or gains and (iii) other non-cash income. Notwithstanding anything herein to the contrary, for purposes of determining Consolidated EBITDA of the Parent and its Subsidiaries for all periods until and including the quarter ending September 30, 2008, (i) such Consolidated EBITDA shall be determined on a combined basis by combining, without duplication, (A) the Consolidated EBITDA of the Parent and its Subsidiaries (other than DYNAenergetics Beteiligungs GmbH, the Target and their respective Subsidiaries) determined on a consolidated basis in accordance with GAAP with (B) the Consolidated EBITDA of each of DYNAenergetics Beteiligungs GmbH, the Target and their respective Subsidiaries determined on an unconsolidated basis in accordance with the generally accepted accounting principles in its respective jurisdiction of incorporation or German GAAP, as applicable, that has been applied to the preparation of its respective financial statements for each of the relevant periods that is a part of the period of calculation and that is prior to the quarter ending March 31, 2008.

"Consolidated Funded Indebtedness" of any Person, means, without duplication, Indebtedness of such Person and its consolidated Subsidiaries, determined on a consolidated basis in accordance with GAAP, evidenced by a note, bond, debenture or similar instrument with regularly scheduled interest payments and a maturity date.

"Consolidated Pro Forma EBITDA" means, for any Person, for any period, without duplication, Consolidated EBITDA of such Person, (i) plus the Consolidated EBITDA for such period of any Subsidiary of Person acquired during such period, as if acquired on the first day of such period and (ii) minus the Consolidated EBITDA for such period of any Subsidiary of such Person disposed of during such period, as if disposed of on the first day of such period, determined in a manner reasonably satisfactory to Administrative Agent.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Default" means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"<u>Default Rate</u>" means a rate per annum equal to (a) with respect to Eurodollar Loans, the rate otherwise applicable to Eurodollar Loans plus 2%, (b) with respect to Eurocurrency Loans, the rate otherwise applicable to Euro Swingline Loans, the rate otherwise applicable to Euro Swingline Loans plus 2% and (d) with respect to all other amounts, the rate otherwise applicable to ABR Loans plus 2%.

"Disposition" means sale, lease, conveyance or other disposition.

"dollars" or "\$" refers to lawful money of the United States of America.

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"Domestic Subsidiary" means any Subsidiary of the US Borrower (other than a Subsidiary of any Foreign Subsidiary) that is organized under the Laws of the United States of America, any State thereof or the District of Columbia.

"Earnings Available for Fixed Charges" means, for any period of determination, an amount equal to (a) Consolidated EBITDA plus (b) lease expenses minus (c) cash income taxes minus (d) Non-Financed Capital Expenditures in each case for the Parent and its Subsidiaries, determined on a consolidated basis as reported in the annual audited and the quarterly unaudited financial statements of the Parent provided in accordance with Section 5.01.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 10.02).

"Environmental Laws" means all Laws, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of either of the Borrowers directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the US Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the US Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by

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the US Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the US Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the US Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the US Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"EURIBOR" means, in relation to any Loan in Euro for any Interest Period, an interest rate per annum equal to the applicable Screen Rate as of 11:00 am Brussels, Belgium time on the second TARGET Days (excluding any TARGET Day that is not a London Business Day) prior to the beginning of such Interest Period for the offering of deposits in Euro for a period comparable to the Interest Period of the relevant Loan.

"Euro", "Euros" and "€" mean the single currency of the Participating Member States.

"Euro Administrative Agent" means J.P. Morgan Europe Limited in London, England, an Affiliate of the Administrative Agent, acting at the request of the Administrative Agent, in its capacity as administrative agent for the Euro Term Lenders and the Euro Revolving Credit Lenders hereunder.

"Euro Applicable Percentage" means, with respect to any Euro Revolving Credit Lender, the percentage of the total Euro Revolving Loan Commitments represented by such Euro Revolving Credit Lender's Euro Revolving Loan Commitment. If the Euro Revolving Loan Commitments have terminated or expired pursuant to this Agreement, the Euro Applicable Percentages shall be determined based upon the Euro Revolving Loan Commitments most recently in effect, giving effect to any assignments pursuant to this Agreement.

"Euro Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Revolving Credit Termination Date and the date of termination of the Euro Revolving Loan Commitments.

"Euro Borrower" has the meaning given in the preamble.

"Euro Guarantors" means each of the Euro Borrower's existing and subsequently acquired or organized Wholly Owned Subsidiaries and each of the US Borrower's existing and subsequently acquired or organized Foreign Subsidiaries that are Wholly Owned Subsidiaries (other than the Euro Borrower), which Subsidiaries guarantee the Obligations of the Euro Borrower under the Loan Documents.

"Euro Indemnitee" has the meaning set forth in Section 10.03(b).

"Euro Issuing Lender" means J.P. Morgan Europe Limited, in its capacity as the issuer of Euro Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i). The Euro Issuing Lender may, in its discretion, arrange for one or more Euro Letters of Credit to be issued by Affiliates of the Euro Issuing Lender, in which case the term

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"Euro Issuing Lender" shall include any Affiliate with respect to Euro Letters of Credit issued by such Affiliate.

"Euro LC Disbursement" means a payment made by the Euro Issuing Lender pursuant to a Euro Letter of Credit.

"Euro LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all Euro Letters of Credit at such time (b) the aggregate amount of all Euro LC Disbursements that have not yet been reimbursed by the Euro Borrower or converted into a Euro Revolving Loan or Euro Swingline Loan pursuant to Section 2.06(e) at such time. The Euro LC Exposure of any Lender at any time shall be its Euro Applicable Percentage of the total Euro LC Exposure at such time.

"Euro Letter of Credit' means any Letter of Credit issued pursuant to Section 2.06 of this Agreement.

"Euro Revolving Credit Lender" means a Lender with a Euro Revolving Loan Commitment or, if the Euro Revolving Loan Commitments have terminated or expired, a Lender with Euro Revolving Credit Exposure.

"Euro Revolving Loan Commitment" means, with respect to each Euro Revolving Credit Lender, the commitment of such lender to make Euro Revolving Loans and to acquire participations in Euro Letters of Credit and Euro Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Euro Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 2.19 or Section 10.04. The initial amount of each such Lender's Euro Revolving Loan Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such lender shall have assumed its Euro Revolving Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Euro Revolving Loan Commitment is €7,000,000.

"Euro Revolving Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Euro Revolving Loans and its Euro LC Exposure and its Euro Swingline Exposure at such time.

"Euro Revolving Loan" means a Loan made in Euros pursuant to Section 2.01(d).

"Euro Swingline Exposure" means, at any time, the aggregate principal amount of all Euro Swingline Loans outstanding at such time. The Euro Swingline Exposure of any Lender at any time shall be its Euro Applicable Percentage of the total Euro Swingline Exposure at such time.

"Euro Swingline Lender" means J.P. Morgan Europe Limited, in its capacity as lender of Euro Swingline Loans hereunder.

"Euro Swingline Rate" means, in relation to a Euro Swingline Loan, the percentage rate per annum which is the aggregate of:

- (a) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Euro Administrative Agent at its request quoted by the Reference Bank to leading banks in the European interbank market as of 11.00 a.m., London time on the date of Borrowing for that Euro Swingline Loan for the offering of deposits in Euro for a period comparable to the Interest Period for the relevant Euro Swingline Loan and for settlement on that day; and
  - (b) 1.75 per cent per annum; and
  - (c) Mandatory Cost (if any).

"Euro Term Lender" means a Lender with a Euro Term Loan Commitment or an outstanding Euro Term Loan.

"Euro Term Loans" means the loans made by the Euro Term Lenders to the Euro Borrower pursuant to this Agreement.

"Euro Term Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make a Euro Term Loan hereunder in the amount set forth on Schedule 2.01, as such Commitment may be reduced or increased pursuant to Section 2.19 or Section 10.04. The initial aggregate amount of the Lenders' Euro Term Loan Commitment is £14,000,000.

"Euro Term Loan Maturity Date" means the fifth anniversary of the Closing Date.

"Eurocurrency Borrowing" means a Borrowing comprised of one or more Eurocurrency Loans.

"Eurocurrency Lender" means a Euro Term Lender, or a Euro Revolving Credit Lender, a Euro Swingline Lender or a Euro Issuing Lender.

"Eurocurrency Loan" means a Euro Term Loan or a Euro Revolving Loan.

"Eurocurrency Rate" means EURIBOR.

"Eurodollar", when used in reference to any Loan or Borrowing in dollars, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Section 7.01.

"Excess Cash Flow" means, for any period, the remainder of the following, all calculated for such period, in respect of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP and without duplication: (a) Consolidated EBITDA, minus (b) (i) cash Interest Expense, (ii) scheduled principal payments of Indebtedness, (iii) voluntary prepayments

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of Indebtedness to the extent not re-borrowed (excluding voluntary prepayments of Revolving Loans or Swingline Loans whether or not re-borrowed and excluding repayments of Indebtedness to the extent repaid with proceeds of other Indebtedness), (iv) income taxes, (v) cash payments of acquisitions which are not financed with proceeds of new equity or which are financed with Indebtedness pursuant to Section 6.01(c) and, in each case, which are not deducted in the calculation of Net Income or Consolidated EBITDA, and (vi) Non-Financed Capital Expenditures for such period.

"Excluded Taxes" means, with respect to the Administrative Agents, any Lender, the Issuing Lender, the Euro Issuing Lender, or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) income, franchise or other similar taxes imposed on (or measured by) its net income by the United States of America, or by any other Governmental Authority by reason of a present or former connection between such Borrower and the jurisdiction of the Governmental Authority imposing the tax, or any political subdivision thereof (other than any such connection arising solely from such Administrative Agents, Lender, Issuing Lender, Euro Issuing Lender, or other recipient having executed, delivered, performed its obligations or received a payment under, or enforced this Agreement), (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which such Borrower is located, and (c) in the case of any such Lender (other than an assignee pursuant to a request by such Borrower under Section 2.19(b)), any deduction or withholding in respect of Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Lender's failure to comply with Section 2.17(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from such Borrower with respect to such deduction or withholding in respect of Tax pursuant to Section 2.17(a).

"Existing Letters of Credit" means those letters of credit described on Schedule 1.01 attached hereto.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means the letter agreement, dated September 7, 2007, among the US Borrower, the Administrative Agents and the sole book runner and lead arranger.

"Financial Officer," means the chief financial officer, principal accounting officer, treasurer or controller of the US Borrower.

"Fitch" means Fitch Ratings, Ltd.

"Fixed Charges" means, for any period of determination, without duplication, the sum of (a) cash Interest Expense and (b) lease expense, (c) scheduled principal payments (excluding any payments made pursuant to Section 2.10) hereunder, and (d) cash dividends in each case, for the Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

"Foreign Lender" means any Lender that is not a "US person" within the meaning of Section 7701(a)(30) of the Code.

"Foreign Subsidiary" means a Subsidiary of the US Borrower that is not a "US person" within the meaning of Section 7701(a)(30) of the Code.

"GAAP" means generally accepted accounting principles in the United States of America.

"German GAAP" means generally accepted accounting principles in the Federal Republic of Germany.

"Governmental Approval" means (i) any authorization, consent, approval, license, waiver, or exemption, by or with; (ii) any notice to; (iii) any declaration of or with; or (iv) any registration by or with, or any other action or deemed action by or on behalf of, any Governmental Authority.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided, that the term guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any guarantee of any guarantor shall be deemed to be the lower of (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee is made and (ii) the maximum amount for which such guarantor may be liable pursuant to the terms of the instrument embodying such guarantee, unless such primary

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obligation and the maximum amount for which such guaranter may be liable are not stated or determinable, in which case the amount of such guarantee shall be such guaranter's maximum reasonably anticipated liability in respect thereof as determined by the US Borrower in good faith.

"Guarantees" means the guarantees issued pursuant to this Agreement as contained in Article IX.

"Guarantors" means the US Borrower, US Guarantors and the Euro Guarantors.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all guarantees by such Person of Indebtedness of others, (h) the principal portion of all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person is nespect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is not liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" means a Euro Indemnitee or a US Indemnitee.

"Information Memorandum" means the Confidential Information Memorandum dated September 2007 relating to the Borrowers and the Transactions.

"Interest Election Request" means a request by the US Borrower to convert or continue a Revolving Loan or a Term Loan or a request by the Euro Borrower to continue a Eurocurrency Borrowing, in each case in accordance with Section 2.08.

"Interest Expense" means, for any Person, for any period, determined on a consolidated basis in accordance with GAAP, the sum of all interest on Indebtedness paid or

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payable (including the portion of rents payable under Capital Lease Obligations allocable to interest) in or for such period, plus all original issue discount and other interest expense associated with Indebtedness accreted or amortized or required to be accreted or amortized in or for such period.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December and the Revolving Credit Termination Date or the Term Loan Maturity, as applicable; (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period; (c) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and until Euro Term Loan Maturity Date; (d) with respect to any Swingline Loan, the day that such Loan is required to be repaid, and (e) with respect to any Euro Swingline Loan, the last day of the Interest Period applicable thereto or on the last Business Day of each calendar month.

"Interest Period" means with respect to any Eurodollar Borrowing and any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a London Business Day (in the case of any Eurodollar Borrowing) or a TARGET Day that is not also a London Business Day (in the case of any Eurocurrency Borrowing), such Interest Period shall be extended to the next succeeding London Business Day or TARGET Day that is a London Business Day, as applicable, unless such next succeeding London Business Day or TARGET Day that is not also a London Business Day, as applicable, would fall in the next calendar month, in which case such Interest Period shall end on the next preceding London Business Day or TARGET Day that is not also a London Business Day, as applicable, and (ii) any Interest Period pertaining to a Eurodollar Borrowing or a Eurocurrency Borrowing that commences on the last London Business Day (in the case of any Eurocurrency Borrowing) or TARGET Day that is a London Business Day (in the case of any Eurocurrency Borrowing) of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last London Business Day or TARGET Day that is a London Business Day, as applicable, of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Investment" means any investment in any Person, whether by means of a purchase of Equity Interests or debt securities, capital contribution, loan, guarantee, time deposit or otherwise (but not including any demand deposit).

"Issuing Lender" means JPMorgan Chase Bank, N.A., in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(i),

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and, solely with respect to the Existing Letters of Credit, Wells Fargo Bank, N.A. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender, in which case the term "Issuing Lender" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Joinder Agreement" means those agreements in the form of Exhibit 1.1B(i) and Exhibit 1.1B(ii).

"Law" means all laws, statutes, treaties, ordinances, codes, acts, rules, regulations, Government Approvals and Orders of all Governmental Authorities, whether now or hereafter in effect.

"LC Disbursement" means a payment made by the Issuing Lender pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such tim<u>plus</u> (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the US Borrower or converted into a Revolving Loan or Swingline Loan pursuant to Section 2.05(e) at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender and the Euro Swingline Lender.

"Letter of Credit" means any letter of credit issued pursuant to Section 2.05 of this Agreement.

"Leverage Ratio" means, for any trailing four quarter period, the ratio of Consolidated Funded Indebtedness of the Parent on the last day of such period to Consolidated Pro Forma EBITDA of the Parent for such trailing four-quarter period.

"LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Telerate System Incorporated Service, the Dow Jones Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London, England time, two (2) Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London, England office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m.,

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London, England time, two Business Days prior to the commencement of such Interest Period.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, the Letters of Credit (and any applications therefor and reimbursement agreements relating thereto), the Security Documents, the Fee Letter and each Swap Agreement with any Lender or Affiliate thereof entered into pursuant to Section 6.07.

"Loans" means the loans made by the Lenders to the US Borrower or the Euro Borrower, as applicable, pursuant to this Agreement.

"London Business Day" means a day that is not a Saturday, Sunday or other day on which commercial banks in London, England are authorized or required by Law to remain closed.

"Mandatory Cost" means the percentage rate per annum calculated by the Euro Administrative Agent in accordance with Exhibit 1.1E.

"Market Rate of Exchange" has the meaning set forth in Section 2.11(d).

"Material Adverse Effect" means a material adverse effect on (i) the business, operations, assets, property, or condition (financial or otherwise) of the either of the Borrowers and their respective Subsidiaries, taken as a whole, (ii) the ability of the Borrowers or Guarantors to perform their Obligations under the Loan Documents, (iii) the validity or enforceability of any of the Loan Documents or (iv) the rights and remedies of the Administrative Agents and the Lenders under the Loan Documents.

"Material Contract" means any contract or agreement, written or oral, to which either of the Borrowers or any of their Subsidiaries is a party to the extent a default under such contract could reasonably be expected to have a Material Adverse Effect.

"Material Indebtedness" means Indebtedness (other than the Loans, Letters of Credit and Euro Letters of Credit) or obligations in respect of one or more Swap Agreements, of any one or more of the Borrowers and their respective Subsidiaries in an aggregate principal amount exceeding \$2,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of either of the Borrowers or any of their respective Subsidiaries in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Moody's" means Moody's Investors Service, Inc.

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- "Mortgages" means mortgages on real property, including the leasehold in Pennsylvania.
- "Mortgaged Property" means the real property located in Pennsylvania and Connecticut covered by the Mortgages.
- "Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.
- "Net Cash Proceeds" means:
- (a) with respect to any Asset Sale, the cash proceeds received by any Borrower or any of its respective Subsidiaries (including cash proceeds subsequently received in respect of non-cash consideration initially received) in respect thereof, net of (i) payments, fees, premiums, underwriting discounts, commissions, costs and expenses paid or incurred in connection with such Asset Sale, (ii) amounts provided as a reserve against any liabilities under any indemnification obligations associated with such Asset Sale (provided that amounts released from such reserves shall constitute Net Cash Proceeds), (iii) all Taxes paid or payable in connection with such Asset Sale and (iv) the amount of all payments required to be made as a result of such Asset Sale to repay any Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such Asset Sale; and
- (b) with respect to any Casualty Event, the cash insurance proceeds, cash condemnation awards and other cash compensation received by any Borrower or any of its respective Subsidiaries in respect thereof, net of (i) payments, fees, premiums, costs and expenses paid or incurred in connection with such Casualty Event, including costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event, (ii) all Taxes paid or payable in connection with such Casualty Event and (iii) the amount of all payments required to be made as a result of such Casualty Event to repay any Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such Casualty Event;

provided that, in the case of any Casualty Event, Net Cash Proceeds shall exclude all proceeds in respect of business interruption insurance, and in each case of any Asset Sale or any Casualty Event by a Subsidiary of the Parent that is not a Wholly Owned Subsidiary of the Parent, only the Parent's and its Wholly Owned Subsidiaries' pro rata portion of such Net Cash Proceeds shall constitute Net Cash Proceeds.

"Net Income" means, for any Person, for any period, the net income or loss of the for such period determined on a consolidated basis in accordance with GAAP.

"New York Business Day" means a day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by Law to remain closed.

- "Non-Financed Capital Expenditures" means Capital Expenditures other than those financed by Indebtedness permitted under Section 6.01(c).
- "Obligations" means all of the duties, obligations and liabilities of any kind of the Borrowers and each Guarantor hereunder or under any of the Loan Documents.
  - "Obligors" means the Borrowers and each Guarantor.
  - "Order" means an order, writ, judgment, award, injunction, decree, ruling or decision of any Governmental Authority or arbitrator.
- "Other Taxes" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.
  - "Parent" has the meaning given in the preamble.
  - "Participant" has the meaning set forth in Section 10.04.
- "Participating Member State" means a member state of the European Community that adopts or has adopted the Euro as its lawful currency under the legislation of the European Union for European Monetary Union.
  - "PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.
  - "Permitted Encumbrances" means:
  - (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords', suppliers', processors' and other like Liens imposed by Law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;
- (d) utility deposits and deposits to secure the performance of bids, tenders, contracts, leases, statutory obligations, surety and appeal bonds (or deposits made to otherwise secure an appeal, stay or discharge in the course of any legal proceeding), performance or completion bonds and other obligations of a like nature, in each case in the ordinary course of business;
  - (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Section 7.01;

- (f) easements, zoning restrictions, rights-of-way, reservations, subdivisions and similar encumbrances or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of owned or leased real property and minor defects and irregularities in title on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of either Borrower or any of its respective Subsidiaries;
  - (g) Liens arising from filing UCC financing statements regarding leases permitted by this Agreement; and
  - (h) Liens of licensors on licenses or sublicenses of Intellectual Property;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

#### "Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) Euro-denominated securities issued or unconditionally guaranteed or insured by any Participating Member State or Switzerland (or by any agency or instrumentality thereof to the extent such securities are backed by the full faith and credit of such Participating Member State), in each case maturing within one year from the date of acquisition thereof;
- (c) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, a rating of at least F1 by Fitch, P-1 by Moody's or A-1 by S&P;
- (d) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, (i) any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 or (ii) any financial institution in a Participating Member State or Switzerland, which financial institution has short term unsecured, unsubordinated and unguaranteed debt instruments in issue having a rating of at least F1 by Fitch, P-1 by Moody's or A-1 by S&P; provided that with respect to any Foreign Subsidiary whose country of organization or country where it conducts its business operations is not a Participating Member State or Switzerland, Permitted Investments shall also mean those investments that are comparable to the investments set forth in this clause (d) in such Foreign Subsidiary's country of organization or country where it conducts business operations;

- (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (d)(ii) above; and
- (f) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated at least AAA by S&P, Aaa by Moody's or AAA by Fitch or (iii) are rated as described in clause (ii) and invest solely in the assets described in clauses (a) through (e) above.
- "Permitted Liens" means Liens that any of the Borrowers and their respective Subsidiaries are permitted to create, incur, assume or permit to exist pursuant to Section 6.02.
- "Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.
- "Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.
- "Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its office located at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.
- "Reference Bank" means the principal London office of J. P. Morgan Europe Limited or such other banks as may be appointed by the Euro Administrative Agent in consultation with the US Borrower.
  - "Register" has the meaning set forth in Section 10.04.
- "Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.
- "Required Lenders" means, at any time, Lenders having Revolving Credit Exposures, Euro Revolving Credit Exposures, Euro Term Loans, Term Loans and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures, Euro Revolving Credit Exposures, Euro Term Loans, Term Loans and unused Commitments at such time.
- "Response" means (a) "response" as such term is defined in CERCLA, 42 U.S.C. §9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to: (i) clean up, remove, treat, abate, or in any other way address any Hazardous Material in the environment; (ii) prevent the release or threatened release of any Hazardous Material; or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests, or any option, warrant or other right to acquire any such Equity Interests.

"Revolving Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure and Swingline Exposure at such time.

"Revolving Credit Lender" means a Lender with a Revolving Loan Commitment or, if the Revolving Loan Commitments have terminated or expired, a Lender with Revolving Credit Exposure.

"Revolving Credit Termination Date" means the fifth anniversary of the Closing Date.

"Revolving Loan" means a Loan made pursuant to Section 2.01(a).

"Revolving Loan Commitment" means, with respect to each Revolving Credit Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09 or Section 2.19 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 2.18 or Section 10.04. The initial amount of each such Lender's Revolving Loan Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Revolving Loan Commitments is \$25,000,000.

"S&P" means Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc.

"Screen Rate" means, with respect to the EURIBOR, the percentage rate per annum determined by the Euro Administrative Agent to be the current rate of the Banking Federation of the European Union for the Reuters (Telerate) Screen - Page 248. In the event that such rate does not appear thereon (or otherwise on such service), the "Screen Rate" for purposes of this definition shall be determined by: (i) reference to such other comparable publicly available service for displaying EURIBOR rates as may be reasonably selected by the Euro Administrative Agent or (ii) at its option, the rate at which Euros approximately equal in principal amount to such Borrowing and for a maturity equal to the applicable Interest Period are offered in immediately available funds to the principal office of the Euro Administrative Agent in London, England by leading banks in the European Market for Euros at approximately 11:00 a.m., London, England time, two (2) TARGET Days prior to the commencement of such Interest Period.

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"Secured Parties" means, (a) in respect of the Obligations of the US Borrower or the US Guarantors, the Administrative Agent, each Lender (other than any Eurocurrency Lender) and each Affiliate of any such Lender who is owed any portion of the Obligations of the US Borrower or the US Guarantors or (b) in respect of the Obligations of the Euro Borrower and the Euro Guarantors, the Euro Administrative Agent, each Eurocurrency Lender and each Affiliate of any such Eurocurrency Lender who is owed any portion of the Obligations of the Euro Borrower or the Euro Guarantors.

"Security Agreements" means (a) that certain Security and Pledge Agreement substantially in the form of Exhibit 1.1C, executed by the US Borrower and all of the Domestic Subsidiaries, if any, of the US Borrower that are Wholly Owned Subsidiaries of the US Borrower and a party thereto and to be joined by such other Domestic Subsidiaries of the US Borrower as provided in Section 5.09(a)(ii) for the benefit of the Secured Parties in respect of the Obligations of the US Borrower or the US Guarantors pursuant to which each such party pledges substantially all of the personal property of such Obligor in accordance with the terms of such Security and Pledge Agreement and (b) those certain Security and Pledge Agreement and Share Pledge Agreements substantially in the forms of Exhibit 1.1D, executed by the Euro Borrower and certain of its Subsidiaries, which are party thereto and to be joined by such Foreign and Domestic Subsidiaries of the US Borrower as provided in Section 5.09(a)(i), Section 5.09(b) and Section 5.09(c), for the benefit of Secured Parties in respect of the Obligations of the Euro Borrower and the Euro Guarantors pursuant to which each such party pledges its right, title and interest in 100% of the Equity Interests in its Foreign Subsidiaries that are Wholly Owned Subsidiaries of the Euro Borrower and all of the shareholder loans owed to such party by such Foreign Subsidiaries.

"Security Documents" means the Security Agreements, the Mortgages, each Joinder Agreement, and each other security document or pledge agreement delivered in accordance with applicable local or foreign Law to grant a valid, perfected security interest in any property, and all UCC or other financing statements or instruments of perfection required by this Agreement, any security agreement or mortgage to be filed with respect to the security interests in property and fixtures created pursuant to the Security Agreement or any mortgage and any other document or instrument utilized to pledge as collateral for any of the Obligations any property of whatever kind or nature.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject (a) with respect to the Base CD Rate, for new negotiable nonpersonal time deposits in dollars of over \$100,000 with maturities approximately equal to three months and (b) with respect to the Adjusted LIBO Rate, for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute Eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory

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Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent. When used with respect to the any Borrower, "Subsidiary" shall include Subsidiaries acquired or formed after giving effect to the Acquisition.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions that is entered into in the ordinary course of business for risk management purposes and not for speculative purposes; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any Borrower or any of its respective Subsidiaries shall be a Swap Agreement.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any

Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

- "Swingline Lender" means JPMorgan Chase Bank, N.A., in its capacity as lender of Swingline Loans hereunder.
- "Swingline Loan" means a Loan made pursuant to Section 2.04(a).
- "Swingline Rate" means a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.
- "Target" means DYNAenergetics GmbH & Co. KG.
- "TARGET Day" means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system is open for the settlement of payments in Euros.
- "<u>Taxes</u>" means any and all present or future taxes, levies, imposts, duties, deductions, or similar charges or withholdings imposed by any Governmental Authority.

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- "Term Lender" means a Lender with Term Loan Commitment or an outstanding Term Loan.
- "Term Loan" means a Loan made pursuant to Section 2.01(b).
- "Term Loan Commitment" means, with respect to each Term Lender, the commitment of such Lender to make a Term Loan hereunder in the amount set forth on Schedule 2.01, as such Commitment may be reduced or increased pursuant to Section 2.18 or Section 10.04. The initial amount of each such Lender's Term Loan Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Term Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Term Loan Commitments is \$45,000,000.
  - "Term Loan Maturity Date" means the fifth anniversary of the Closing Date.
- "Three-Month Secondary CD Rate" means, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day is not a Business Day, the next preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day) or, if such rate is not so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 a.m., New York City time, on such day (or, if such day is not a Business Day, on the next preceding Business Day) by the Administrative Agent from three negotiable certificate of deposit dealers of recognized standing selected by it.
- "<u>Transactions</u>" means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.
- "Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Alternate Base Rate, or the Eurocurrency Rate.
- "<u>Uniform Commercial Code</u>" or "<u>UCC</u>" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other State the Laws of which are required to be applied in connection with the issue or perfection of security interests.
- "US Guarantors" means each of the US Borrower's existing and subsequently acquired or organized Wholly Owned Subsidiaries that are Domestic Subsidiaries (other than any Domestic Subsidiary of any Foreign Subsidiary), which US Guarantors guarantee certain Obligations under the Loan Documents pursuant to either Section 9.01(a)(i) or Section 9.01(a)(ii).
  - "US Indemnitee" has the meaning set forth in Section 10.03(b).

- "Wholly Owned Subsidiary" means, with respect to any parent at any date, a Subsidiary of which Equity Interests representing 100% of the equity or general partnership interests, as applicable (other than director or nominal shares), are, as of such date, owned, Controlled or held by such parent or one or more Wholly Owned Subsidiaries of such parent.
- "Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.
- Section 1.02 <u>Classification of Loans and Borrowings</u> For purposes of this Agreement, Loans may be classified and referred to by Class <u>&.g.</u>, a "<u>Revolving Loan</u>") or by Type (<u>e.g.</u>, a "<u>Eurodollar Loan</u>") or by Class and Type (<u>e.g.</u>, a "<u>Eurodollar Revolving Borrowing</u>") or by Type (<u>e.g.</u>, a "<u>Eurodollar Borrowing</u>") or by Class and Type (<u>e.g.</u>, a "<u>Eurodollar Revolving Borrowing</u>").
- Section 1.03 Terms Generally The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, replaced or otherwise modified (subject to any restrictions on such amendments, supplements, replacements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference herein or in any other Loan Document to a Loan Document shall include all appendices, exhibits and schedules thereto and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.
- Section 1.04 Accounting Terms; GAAP Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the US Borrower notifies the Administrative Agent that the US Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the US Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied

### ARTICLE II

#### The Credits

Section 2.01 <u>Commitments</u> Subject to the terms and conditions set forth herein:

- (a) Each Revolving Credit Lender agrees to make loans to the US Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Loan Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the US Borrower may borrow, prepay and reborrow Revolving Loans. Notwithstanding the foregoing, no more than \$7,000,000 may be drawn under the Revolving Loan Commitments on the Closing Date, and no more than \$12,500,000 may be outstanding under the Revolving Loan Commitments at any time prior to compliance with the covenant contained in Section 5.15.
- (b) Each Term Lender agrees to make a single loan to the US Borrower on the Closing Date in the principal amount of such Lender's Term Loan Commitment. The Term Loan Commitments are not revolving in nature, and amounts prepaid or repaid with respect to Term Loans may not be reborrowed.
- (c) Each Euro Term Lender agrees to make a single loan to the Euro Borrower on the Closing Date in the principal amount of such Lender's Euro Term Loan Commitment. The Euro Term Loan Commitments are not revolving in nature, and amounts prepaid or repaid with respect to Euro Term Loans may not be reborrowed.
- (d) Each Euro Revolving Credit Lender agrees to make Loans to the Euro Borrower from time to time during the Availability Period in an aggregate amount that will not result in such Lender's Euro Revolving Credit Exposure exceeding such Lender's Euro Revolving Loan Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Euro Borrower may borrow, prepay and reborrow Euro Revolving Loans. Notwithstanding the foregoing, not more than &1,000,000 may be drawn under the Euro Revolving Loan Commitments on the Closing Date, and no more than &3,500,000 may be outstanding under the Euro Revolving Loan Commitments at any time prior to compliance with the covenant contained in Section 5.15.
- Section 2.02 <u>Loans and Borrowings</u> (a) Each Loan of any Class (other than a Swingline Loan or a Euro Swingline Loan) shall be made as part of a Borrowing consisting of Loans of such Class made by the appropriate Lenders ratably in accordance with their respective Commitments of such Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; <u>provided</u> that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.
- (b) Subject to Section 2.13, each Borrowing under the Revolving Loan Commitment and the Term Loan Commitment shall be comprised entirely of ABR Loans or Eurodollar Loans as the US Borrower may request in accordance herewith. Each Lender at its option may

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make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect such Lender's Commitment or the obligation of the US Borrower to repay such Loan in accordance with the terms of this Agreement. Each Borrowing under the Euro Term Loan Commitment and the Euro Revolving Loan Commitment shall be comprised entirely of Eurocurrency Loans.

- (c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the commencement of each Interest Period for any Eurocurrency Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of €100,000 and not less than €1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$50,000 and not less than \$100,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to (i) the entire unused balance of the total Revolving Loan Commitments, (ii) that which is required to repay a Swingline Loan, or (iii) that which is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) Eurocourrency Borrowings outstanding.
- (d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolving Credit Termination Date, Term Loan Maturity Date or Euro Term Loan Maturity Date, as applicable.
- Section 2.03 Requests for Borrowings To request a Borrowing other than a Swingline Loan or a Euro Swingline Loan, the US Borrower or the Euro Borrower, as applicable, shall make such request by telephone (a) in the case of a Eurodollar Borrowing, to the Administrative Agent, not later than 12:00 noon, New York City time, three (3) Business Days before the date of the proposed Borrowing, (b) in the case of an ABR Borrowing, to the Administrative Agent, not later than 12:00 noon, New York City time, one (1) Business Day before the date of the proposed Borrowing, or (c) in the case of a Eurocurrency Borrowing, to the Euro Administrative Agent not later than 11:00 a.m., London, England time, three (3) Business Days before the date of the proposed Borrowing; provided that any such notice of an ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e) may be given not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent or the Euro Administrative Agent, as applicable, of a written Borrowing Request in a form approved by the Administrative Agent and signed by the US Borrower or the Euro Borrower, as applicable. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:
  - (i) the aggregate amount of the requested Borrowing;
  - (ii) the date of such Borrowing, which shall be a Business Day (or, in the case of a Eurocurrency Borrowing, a TARGET Day that is a London Business Day);

- (iii) the Class of such Borrowing;
- (iv) whether such Borrowing is to be an ABR Borrowing, a Eurodollar Borrowing or a Eurocurrency Borrowing, as applicable;
- (v) in the case of a Eurodollar Borrowing or a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vi) the location and number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of Borrowing is specified, with respect to Borrowings under the Revolving Loan Commitments and the Term Loan Commitments, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing or any Eurocurrency Borrowing, then the US Borrower or the Euro Borrower, as applicable, shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, with respect to Borrowings under the Revolving Loan Commitments and the Term Loan Commitments, the Administrative Agent shall advise each Lender having a Revolving Loan Commitment or a Term Loan Commitment, as applicable, of the details such Borrowing Request and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Promptly following receipt of a Borrowing Request in accordance with this Section, with respect to Borrowings under the Euro Term Loan Commitments and the Euro Revolving Loan Commitments, the Euro Administrative Agent shall advise each Lender having a Euro Term Loan Commitment or a Euro Revolving Loan Commitment of the details of such Borrowing Request and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

# Section 2.04 <u>Swingline Loans</u>

- (a) <u>US Swingline Loans</u>. (i) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the US Borrower from time to time during the Availability Period in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$5,000,000 or (ii) the total Revolving Credit Exposures exceeding the total Revolving Loan Commitments; <u>provided</u> that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the US Borrower may borrow, prepay and reborrow Swingline Loans. Each Swingline Loan shall be in an amount that is an integral multiple of \$1 and not less than \$25,000.
- (ii) To request a Swingline Loan, the US Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon, New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the US Borrower. The Swingline Lender shall make

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each Swingline Loan available to the US Borrower by means of a credit to the general deposit account of the US Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in <u>Section 2.05(e)</u>, by remittance to the Issuing Lender) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

- (iii) The Swingline Lender may by written notice given to the Administrative Agent not later than 11:00 a.m., New York City time, on any Business Day require the Revolving Credit Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which the Revolving Credit Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Credit Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Credit Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Credit Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of such Lender), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Credit Lenders. The Administrative Agent shall notify the US Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the US Borrower (or other party on behalf of the US Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Credit Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid by the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the US Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the US Borrower of any default in the payment thereof.
- (b) <u>Euro Swingline Loans</u>. (i) Subject to the terms and conditions set forth herein, the Euro Swingline Lender agrees to make Euro Swingline Loans to the Euro Borrower from time to time during the Euro Availability Period in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Euro Swingline Loans exceeding €1,000,000 or (ii) the total Euro Revolving Credit Exposures exceeding the total Euro Revolving Loan Commitments; <u>provided</u> that the Euro Swingline Lender shall not be required to make a Euro Swingline Loan to refinance an outstanding Euro

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Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Euro Borrower may borrow, prepay and reborrow Euro Swingline Loans. Each Euro Swingline Loan shall be in an amount that is not less than  $\[ \epsilon \]$ 250,000.

- (ii) To request a Euro Swingline Loan, the Euro Borrower shall notify the Euro Administrative Agent of such request by telephone (confirmed in writing by telecopy no later than 9:00 a.m., London time), not later than 9:00 a.m., London time, on the day of a proposed Euro Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a London Business Day) and amount of the requested Euro Swingline Loan. The Euro Administrative Agent will promptly advise the Euro Swingline Lender of any such notice received from the Euro Borrower. The Euro Swingline Lender shall make each Euro Swingline Loan available to the Euro Borrower by means of a credit to a deposit account of the Euro Borrower designated by Euro Borrower in writing in its confirmation of its request for such Euro Swingline Loan (or, in the case of a Euro Swingline Loan made to finance the reimbursement of a Euro LC Disbursement as provided in Section 2.06(e)) by 3:00 p.m., London time, on the requested date of such Euro Swingline Loan.
- (iii) The Euro Swingline Lender may by written notice given to the Euro Administrative Agent not later than 11:00 a.m., London time, on any London Business Day require the Euro Revolving Credit Lenders to acquire participations on such London Business Day in all or a portion of the Euro Swingline Loans outstanding. Such notice shall specify the aggregate amount of Euro Swingline Loans in which the Euro Revolving Credit Lenders will participate. Promptly upon receipt of such notice, the Euro Administrative Agent will give notice thereof to each Euro Revolving Credit Lender, specifying in such notice such Euro Lender's Applicable Percentage of such Euro Swingline Loan or Loans. Each Euro Revolving Credit Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Euro Administrative Agent, for the account of the Euro Swingline Lender, such Lender's Euro Applicable Percentage of such Euro Swingline Loans. Each Euro Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations in Euro Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Euro Revolving Credit Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of such Lender), and the Euro Administrative Agent shall promptly pay to the Euro

Swingline Lender the amounts so received by it from the Euro Revolving Credit Lenders. The Euro Administrative Agent shall notify the Euro Borrower of any participations in any Euro Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Euro Swingline Loan shall be made to the Euro Administrative Agent and not to the Euro Swingline Lender. Any amounts received by the Euro Swingline Lender from the Euro Borrower (or other party on behalf of the Euro Borrower) in respect of a Euro Swingline Loan after receipt by the Euro Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Euro Administrative Agent; any such amounts received by the Euro Administrative Agent shall be promptly remitted by the Euro Administrative Agent to the Euro Revolving Credit Lenders that shall have made their payments pursuant to this paragraph and to

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the Euro Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid by the Euro Swingline Lender or to the Euro Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Euro Borrower for any reason. The purchase of participations in a Euro Swingline Loan pursuant to this paragraph shall not relieve the Euro Borrower of any default in the payment thereof.

- Section 2.05 Letters of Credit; Existing Letters of Credit (a) General. Subject to the terms and conditions set forth herein, the US Borrower may request the issuance of, and the Issuing Lender shall issue, Letters of Credit for the account of the US Borrower or the account of any of its Subsidiaries, in a form reasonably acceptable to the Administrative Agent and the Issuing Lender, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the US Borrower to, or entered into by the US Borrower with, the Issuing Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Existing Letters of Credit shall be deemed to be issued hereunder and shall be Letters of Credit for all purposes hereunder.
- (b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the US Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Lender) to the Issuing Lender and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a New York Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Lender, the US Borrower also shall submit a letter of credit application on the Issuing Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the US Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$\$5,000,000 and (ii) the total Revolving Credit Exposures shall not exceed the total Revolving Loan Commitments.
- (c) Expiration Date. Each Letter of Credit shall expire at or prior to 5:00 p.m., New York City time, on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Revolving Credit Termination Date; provided, however, that any Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (ii) above), and further provided, the Existing Letters of Credit may expire later than one year after the date of issuance, provided any renewal or extension thereof complies with the foregoing provisions.

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- (d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders, the Issuing Lender hereby grants to each Revolving Credit Lender, and each such Revolving Credit Lender hereby acquires from the Issuing Lender, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Lender and not reimbursed by the US Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the US Borrower for any reason. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.
- (e) Reimbursement. If the Issuing Lender shall make any LC Disbursement in respect of a Letter of Credit for the US Borrower's own account or the account of any of its Subsidiaries, the US Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the US Borrower shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by the US Borrower prior to such time on such date, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that the US Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$1,000,000, the US Borrower may, subject to the conditions to borrowing set forth herein, request, in accordance with Section 2.03 or Section 2.04, that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the US Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the US Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Credit Lender of the applicable LC Disbursement, the payment then due from the US Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Credit Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the US Borrower, in the same manner as provided in Section 2.07 with respect to the Issuing Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of such Lender), and the Administrative Agent shall promptly pay to the Issuing Lender the amounts so received by

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payment made by a Revolving Credit Lender pursuant to this paragraph to reimburse the Issuing Lender for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the US Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The US Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of

setoff against, the US Borrower's Obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Lender; provided that the foregoing shall not be construed to excuse the Issuing Lender from liability to the US Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the US Borrower to the extent permitted by applicable Law) suffered by the US Borrower that are caused by the Issuing Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Lender (as finally determined by a court of competent jurisdiction), the Issuing Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make paymen

(g) <u>Disbursement Procedures</u>. The Issuing Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Lender shall promptly notify the Administrative Agent and the US Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Lender has made or will make an LC Disbursement thereunder; <u>provided</u> that any failure to give or delay in giving such notice shall not relieve the US Borrower of its obligation

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to reimburse the Issuing Lender and the Revolving Credit Lenders with respect to any such LC Disbursement.

- (h) <u>Interim Interest.</u> If the Issuing Lender shall make any LC Disbursement, then, unless the US Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the US Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; <u>provided</u> that, if the US Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then <u>Section 2.13(e)</u> shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Lender, except that interest accrued on and after the date of payment by any Revolving Credit Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Lender shall be for the account of such Lender to the extent of such payment.
- (i) Replacement of the Issuing Lender. The Issuing Lender may be replaced at any time by written agreement among the US Borrower, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Lender. At the time any such replacement shall become effective, the US Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of the Issuing Lender under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.
- (j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the US Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, or the Revolving Credit Lenders with LC Exposure representing greater than 50% of the total LC Exposure demanding the deposit of cash collateral pursuant to this paragraph), the US Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Credit Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon minus the amount on deposit in such account that has not been applied against the Obligations of the US Borrower hereunder; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the US Borrower described in clause (h) or (i) of Section 7.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations of the US Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the

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option and discretion of the Administrative Agent (but, if so made, shall be limited to overnight bank loans or other dollar-denominated investments generally comparable to those described in clauses (a) through (f) of Permitted Investments) and at the US Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Lender for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the US Borrower for the LC Exposure at such time or, subject to the consent of Revolving Credit Lenders with LC Exposure representing greater than 50% of the total LC Exposure, be applied to satisfy other obligations of the US Borrower under this Agreement. If the US Borrower is required to provide an amount of cash collateral hereunder, such amount (to the extent not applied as aforesaid) shall be returned to the US Borrower within three Business Days after all Events of Default have been cured or waived.

- Section 2.06 <u>Euro Letters of Credit.</u> (a) <u>General.</u> Subject to the terms and conditions set forth herein, the Euro Borrower may request the issuance of, and the Euro Issuing Lender shall issue, Euro Letters of Credit for the account of the Euro Borrower or the account of any of its Subsidiaries, in a form reasonably acceptable to the Euro Administrative Agent and the Euro Issuing Lender, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Euro Borrower to, or entered into by the Euro Borrower with, the Euro Issuing Lender relating to any Euro Letter of Credit, the terms and conditions of this Agreement shall control.
- (b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Euro Letter of Credit (or the amendment, renewal or extension of an outstanding Euro Letter of Credit), the Euro Borrower shall hand deliver or telecopy to the Euro Issuing Lender and the Euro Administrative Agent (three (3) London Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Euro Letter of Credit, or identifying the Euro Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a London Business Day), the date on which such Euro Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Euro Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Euro Letter of Credit. If requested by the Euro Issuing Lender, the Euro Borrower also shall submit a letter of credit application on the Euro Issuing Lender's standard form in connection with any request for a Euro Letter of Credit. A Euro Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Euro Letter of Credit the Euro Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the Euro LC Exposure shall not exceed €1,500,000 and (ii) the total Euro Revolving Credit Exposures shall not exceed the total Euro Revolving Loan Commitments. Each Euro Letter of Credit must be at least €250,000, and the maximum number of outstanding Euro Letters of Credit at any time shall not exceed five (5).
- (c) Expiration Date. Each Euro Letter of Credit shall expire at or prior to 5:00 p.m., London time, on the earlier of (i) the date one year after the date of the issuance of such Euro

Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Revolving Credit Termination Date; <u>provided</u>, however, that any Euro Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (ii) above).

- (d) Participations. By the issuance of a Euro Letter of Credit (or an amendment to a Euro Letter of Credit increasing the amount thereof) and without any further action on the part of the Euro Issuing Lender or the Lenders, the Euro Issuing Lender hereby grants to each Euro Revolving Credit Lender, and each such Euro Revolving Credit Lender hereby acquires from the Euro Issuing Lender, a participation in such Euro Letter of Credit equal to such Lender's Euro Applicable Percentage of the aggregate amount available to be drawn under such Euro Letter of Credit. In consideration and in furtherance of the foregoing, each Euro Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Euro Administrative Agent, for the account of the Euro Issuing Lender, such Lender's Euro Applicable Percentage of each Euro LC Disbursement made by the Euro Issuing Lender and not reimbursed by the Euro Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Euro Borrower for any reason. Each Euro Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Euro Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Euro Letter of Credit or the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.
- (e) Reimbursement. If the Euro Issuing Lender shall make any Euro LC Disbursement in respect of a Euro Letter of Credit for the Euro Borrower's own account or the account of any of its Subsidiaries, the Euro Borrower shall reimburse such Euro LC Disbursement by paying to the Euro Administrative Agent an amount equal to such LC Disbursement not later than 1:00 p.m., London time, on the date that such Euro LC Disbursement is made, if the Euro Borrower shall have received notice of such Euro LC Disbursement prior to 11:00 a.m., London time, on such date, or, if such notice has not been received by the Euro Borrower prior to such time on such date, then not later than 1:00 p.m., London time, on the Business Day immediately following the day that the Euro Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such Euro LC Disbursement is not less than €500,000, the Euro Borrower may, subject to the conditions to borrowing set forth herein, request, in accordance with Section 2.03 or Section 2.04, that such payment be financed with a Euro Swingline Loan in an equivalent amount and, to the extent so financed, the Euro Borrower's obligation to make such payment shall be discharged and replaced by the resulting Euro Swingline Loan. If the Euro Borrower fails to make such payment when due, the Euro Administrative Agent shall notify each Euro Revolving Credit Lender of the applicable Euro LC Disbursement, the payment then due from the Euro Borrower in respect thereof and such Lender's Euro Applicable Percentage thereof. Promptly following receipt of such notice, each Euro Revolving Credit Lender shall pay to the Euro Administrative Agent its Euro Applicable Percentage of the payment then due from the Euro Borrower, in the same manner as provided in Section 2.07 with respect to Loans

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made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of such Lender), and the Euro Administrative Agent shall promptly pay to the Euro Issuing Lender the amounts so received by it from the Euro Revolving Credit Lenders. Promptly following receipt by the Euro Administrative Agent of any payment from the Euro Borrower pursuant to this paragraph, the Euro Administrative Agent shall distribute such payment to the Euro Issuing Lender or, to the extent that the Euro Revolving Credit Lenders have made payments pursuant to this paragraph to reimburse the Euro Issuing Lender, then to such Euro Revolving Credit Lenders and the Euro Issuing Lender as their interests may appear. Any payment made by a Euro Revolving Credit Lender pursuant to this paragraph to reimburse the Euro Issuing Lender for any Euro LC Disbursement (other than the funding of a Euro Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Euro Borrower of its obligation to reimburse such Euro LC Disbursement.

Obligations Absolute. The Euro Borrower's obligation to reimburse Euro LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Euro Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Euro Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Euro Issuing Lender under a Euro Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Euro Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Euro Borrower's Obligations hereunder. Neither the Euro Administrative Agent, the Lenders nor the Euro Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Euro Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Euro Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Euro Issuing Lender; provided that the foregoing shall not be construed to excuse the Euro Issuing Lender from liability to the Euro Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Euro Borrower to the extent permitted by applicable Law) suffered by the Euro Borrower that are caused by the Euro Issuing Lender's failure to exercise care when determining whether drafts and other documents presented under a Euro Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Euro Issuing Lender (as finally determined by a court of competent jurisdiction), the Euro Issuing Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Euro Letter of Credit, the Euro Issuing Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary,

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or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Euro Letter of Credit.

- (g) <u>Disbursement Procedures</u>. The Euro Issuing Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Euro Letter of Credit. The Euro Issuing Lender shall promptly notify the Euro Administrative Agent and the Euro Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Euro Issuing Lender has made or will make an Euro LC Disbursement thereunder; <u>provided</u> that any failure to give or delay in giving such notice shall not relieve the Euro Borrower of its obligation to reimburse the Euro Issuing Lender and the Euro Revolving Credit Lenders with respect to any such Euro LC Disbursement.
- (h) Interim Interest. If the Euro Issuing Lender shall make any Euro LC Disbursement, then, unless the Euro Borrower shall reimburse such Euro LC Disbursement in full on the date such Euro LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such Euro LC Disbursement is made to but excluding the date that the Euro Borrower reimburses such Euro LC Disbursement, at the rate per annum then applicable to Euro Swingline Loans; provided that, if the Euro Borrower fails to reimburse such Euro LC Disbursement when due pursuant to paragraph (e) of this Section, therefore the account of the Euro Issuing Lender, except that interest accrued on and after the date of payment by any Euro Revolving Credit Lender pursuant to paragraph (e) of this Section to reimburse the Euro Issuing Lender shall be for the account of such Lender to the extent of such payment.

- (i) Replacement of the Euro Issuing Lender. The Euro Issuing Lender may be replaced at any time by written agreement among the Euro Borrower, the Euro Administrative Agent, the replaced Euro Issuing Lender and the successor Euro Issuing Lender. The Euro Administrative Agent shall notify the Lenders of any such replacement of the Euro Issuing Lender. At the time any such replacement shall become effective, the Euro Borrower shall pay all unpaid fees accrued for the account of the replaced Euro Issuing Lender pursuant to Section 2.11(b). From and after the effective date of any such replacement, (i) the successor Euro Issuing Lender shall have all the rights and obligations of the Euro Issuing Lender this Agreement with respect to Euro Letters of Credit to be issued thereafter and (ii) references herein to the term "Euro Issuing Lender" shall be deemed to refer to such successor or to any previous Euro Issuing Lender, or to such successor and all previous Euro Issuing Lenders, as the context shall require. After the replacement of an Euro Issuing Lender hereunder, the replaced Euro Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of a Euro Issuing Lender under this Agreement with respect to Euro Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Euro Letters of Credit.
- (j) <u>Cash Collateralization</u>. If any Event of Default shall occur and be continuing, on the Business Day that the Euro Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, or the Euro Revolving Credit Lenders with Euro LC Exposure representing greater than 50% of the total Euro LC Exposure demanding the deposit of cash collateral pursuant to this paragraph), the Euro

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Borrower shall deposit in an account with the Euro Administrative Agent, in the name of the Euro Administrative Agent and for the benefit of the Euro Revolving Credit Lenders, an amount in cash equal to the Euro LC Exposure as of such date plus any accrued and unpaid interest thereon minus the amount on deposit in such account that has not been applied against the Obligations of the Euro Borrower hereunder; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Euro Borrower described in clause (h) or (i) of Section 7.01. Such deposit shall be held by the Euro Administrative Agent as collateral for the payment and performance of the Obligations of the Euro Borrower under this Agreement. The Euro Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and discretion of the Euro Administrative Agent (but, if so made, shall be limited to overnight bank loans or other Euro-denominated investments generally comparable to those described in clauses (a) through (f) of Permitted Investments) and at the Euro Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Euro Administrative Agent to reimburse the Euro Issuing Lender for Euro LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Euro Borrower for the Euro LC Exposure at such time or, subject to the consent of Euro Revolving Credit Lenders with Euro Ecxposure representing greater than 50% of the total Euro LC Exposure, be applied

Section 2.07 Funding of Borrowings (a) Each Revolving Credit Lender and Term Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the each such Lender; provided that Swingline Loans shall be made as provided in Section 2.04(a). The Administrative Agent will make such Loans available to the US Borrower by promptly crediting the amounts so received, in dollars, to such account or accounts of the US Borrower designated by the US Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the Issuing Lender. Each Euro Term Lender and Euro Revolving Credit Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, London, England time, to the account of the Euro Administrative Agent most recently designated by it for such purpose by notice to the each such Lender; provided that Euro Swingline Loans shall be made as provided in Section 2.04(b). The Euro Administrative Agent will make such Loans available to the Euro Borrower by promptly crediting the amounts so received, in Euros, to such account or accounts of the Euro Borrower designated by the Euro Borrower in the applicable Borrowing Request; provided that Euro Swingline Loans made to finance the reimbursement of a Euro LC Disbursement as provided in Section 2.06(e) shall be remitted by the Euro Administrative Agent to the Euro Issuing Lender.

- (b) Unless the Administrative Agent or the Euro Administrative Agent, as applicable, shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent or the Euro Administrative Agent, as applicable, such Lender's share of such Borrowing, the Administrative Agents may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the US Borrower or the Euro Borrower, as applicable, a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent or the Euro Administrative Agent, as applicable, then the applicable Lender and the US Borrower in respect of any Borrowing by it and the Euro Borrower in respect of any Borrowing by it, as applicable, severally agree to pay to the Administrative Agent or the Euro Administrative Agent or the Euro Administrative Agent or the Euro Borrower, as applicable, to but excluding the date of payment to the Administrative Agent or the Euro Administrative Agent, as applicable, to but excluding the date of payment to the Administrative Agent or the Euro Administrative Agent, as applicable, at (i) in the case of a Revolving Credit Lender or a Term Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, (ii) in the case of the US Borrower, the interest rate applicable to ABR Loans, or (iii) in the case of a Euro Term Lender, a Euro Revolving Credit Lender or the Euro Borrower, the Eurocurrency Rate. If such Lender pays such amount to the Administrative Agent or Euro Administrative Agent, as applicable, then such amount shall constitute such Lender's Loan included in such Borrowing.
- Section 2.08 Interest Elections Each Borrowing under the Revolving Credit Commitments and the Term Loan Commitments may be either a Eurodollar Borrowing; Borrowing; Borrowings under the Euro Term Loan Commitments and the Euro Revolving Loan Commitments may only be Eurocurrency Borrowings.
  - (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing and a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, (i) with respect to Borrowings under the Revolving Credit Commitment or the Term Loan Commitment, the US Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section, and (ii) with respect to a Eurocurrency Borrowing, the Euro Borrower may elect Interest Periods therefor, all as provided in this Section. Each Borrower may elect different options with respect to different portions of its affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings or Euro Swingline Borrowings, which may not be converted or continued.
  - (b) To make an election pursuant to this Section, the US Borrower or the Euro Borrower, as applicable, shall notify the Administrative Agent or the Euro Administrative Agent, respectively, of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if such Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such

Administrative Agent, as applicable, of a written Interest Election Request in a form approved by the Administrative Agent and signed by the US Borrower or the Euro Borrower, as applicable.

- (c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:
- (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);
- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a New York Business Day (or, in the case of a Eurocurrency Borrowing, a TARGET Day that is also a London Business Day);
  - (iii) whether the resulting Borrowing is to be an ABR Borrowing, a Eurodollar Borrowing or a Eurocurrency Borrowing; and
- (iv) if the resulting Borrowing is a Eurodollar Borrowing or a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing or a Eurocurrency Borrowing but does not specify an Interest Period, then the US Borrower or the Euro Borrower, as applicable, shall be deemed to have selected an Interest Period of one month's duration.

- (d) Promptly following receipt of an Interest Election Request from the US Borrower, the Administrative Agent shall advise each affected Lender of the details thereof and of such Lender's portion of each resulting Borrowing. Promptly following receipt of an Interest Election Request from the Euro Borrower, the Euro Administrative Agent shall advise each affected Lender of the details thereof and of such Lender's portion of each resulting Borrowing.
- (e) If the US Borrower or the Euro Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing or a Eurocurrency Borrowing, respectively, prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing in the case of a Eurodollar Borrowing or to a Eurocurrency Borrowing with an Interest Period of one month's duration in the case of a Eurocurrency Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the US Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

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- Section 2.09 <u>Termination and Reduction of Commitments</u> The Term Loan Commitments and the Euro Term Loan Commitments shall terminate at the 5:00 p.m., New York City time, on the Closing Date.
- (a) Unless previously terminated, the Revolving Loan Commitments and the Euro Revolving Loan Commitments shall terminate on the Revolving Credit Termination Date
- (b) The US Borrower may at any time terminate or from time to time reduce the Revolving Loan Commitments provided that (A) each reduction of the Revolving Loan Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (B) the US Borrower shall not terminate or reduce the Revolving Loan Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the Revolving Credit Exposures would exceed the total Revolving Loan Commitments.
- (c) The US Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Loan Commitments under paragraph (b) of this Section at least three New York Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Revolving Credit Lenders of the contents thereof. Each notice delivered by the US Borrower pursuant to this Section shall be irrevocable. Any termination or reduction of the Revolving Loan Commitments shall be permanent. Each reduction of the Revolving Loan Commitments shall be made ratably among the Revolving Credit Lenders in accordance with their respective Revolving Loan Commitments.
- (d) The Euro Borrower may at any time terminate or from time to time reduce the Euro Revolving Loan Commitments provided that (A) each reduction of the Euro Revolving Loan Commitments shall be in an amount that is an integral multiple of  $\in 1,000,000$  and not less than  $\in 2,000,000$  and (B) the Euro Borrower shall not terminate or reduce the Euro Loan Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the Euro Revolving Credit Exposures would exceed the total Euro Revolving Loan Commitments.
- (e) The Euro Borrower shall notify the Euro Administrative Agent of any election to terminate or reduce the Euro Revolving Loan Commitments under paragraph (d) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Euro Administrative Agent shall advise the Euro Revolving Lenders of the contents thereof. Each notice delivered by the Euro Borrower pursuant to this Section shall be irrevocable. Any termination or reduction of the Euro Revolving Loan Commitments shall be made ratably among the Euro Revolving Credit Lenders in accordance with their respective Euro Revolving Loan Commitments.
- Section 2.10 Repayment of Loans; Evidence of Debt (a) The US Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each

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Revolving Credit Lender the then unpaid principal amount of each Revolving Loan on the Revolving Credit Termination Date, and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Credit Termination Date; <u>provided</u> that on each date that a Revolving Borrowing is made, the US Borrower shall repay all Swingline Loans then outstanding.

- (b) The US Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the Term Lenders principal on the Term Loan in amounts equal to (i) \$4,500,000 on the first anniversary of the Closing Date, (ii) \$6,750,000 on the second and third anniversaries of the Closing Date, and (iii) \$9,000,000 on the fourth anniversary of the Closing Date, in addition to any other mandatory payments required under the Loan Documents. If not sooner paid, the US Borrower shall repay in full the Term Loans on the Term Loan Maturity Date.
- (c) The Euro Borrower hereby unconditionally promises to pay (i) to the Euro Administrative Agent for the account of each Euro Revolving Credit Lender the then unpaid principal amount of each Euro Revolving Loan on the Revolving Credit Termination Date and (ii) to the Euro Swingline Lender, the then unpaid principal amount of each Euro Swingline Loan on the Revolving Credit Termination Date; provided that on each date that a Euro Revolving Borrowing is made, the Euro Borrower shall repay all Euro Swingline Loans then outstanding.

- (d) The Euro Borrower hereby unconditionally promises to pay to the Euro Administrative Agent for the account of the Euro Term Lenders principal on the Euro Term Loan in amounts equal to (i) on the first anniversary  $\in 1,400,000$ , (ii) the second and third anniversaries  $\in 2,100,000$ , and (iii)  $\in 2,800,000$  on the fourth anniversary of the Closing Date, in addition to any other mandatory payments required under the Loan Documents. If not sooner paid, the Euro Borrower shall repay in full the Euro Term Loans on the Euro Term Loan Maturity Date.
- (e) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.
- (f) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made under the Revolving Loan Commitments and the Term Loan Commitments, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the US Borrower to each Revolving Credit Lender and Term Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Revolving Credit Lenders and Term Lenders and each such Lender's share thereof.
- (g) The Euro Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made under the Euro Revolving Loan Commitments and the Euro Term Loan Commitments, the Class thereof and the Interest Period applicable thereto (ii) the amount of any principal or interest due and payable or to become due and payable from the

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Euro Borrower to each Euro Revolving Credit Lender and Euro Term Lender and (iii) the amount of any sum received by the Euro Administrative Agent hereunder for the account of the Euro Revolving Credit Lenders and the Euro Term Lenders and each such Lender's share thereof.

- (h) The entries made in the accounts maintained pursuant to paragraph (e), (f) or (g) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or any of the Administrative Agents to maintain such accounts or any error therein shall not in any manner affect the obligation of each Borrower to repay the respective Loans made to it in accordance with the terms of this Agreement.
- (i) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the US Borrower or the Euro Borrower, as applicable, shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent or the Euro Administrative Agent, as applicable. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).
- Section 2.11 <u>Prepayment of Loans</u> (a) Each Borrower shall have the right at any time and from time to time to prepay any Borrowing selected by it in whole or in part, without penalty or premium (other than breakage costs and similar expenses, if any, due under <u>Section 2.16</u>), subject to prior notice in accordance with paragraph (d) of this Section.
- (b) Following the end of each fiscal year of the US Borrower, the US Borrower shall prepay the Term Loans and the Euro Borrower shall prepay the Euro Term Loans in an aggregate amount (the "Aggregate Excess Cash Flow Amount") equal to (i) if the Leverage Ratio for such fiscal year is greater than or equal to 1.25 to 1.0, (x) fifty percent (50%) of Excess Cash Flow for such fiscal year, minus (y) fifty percent (50%) of any voluntary prepayments of Term Loans and Euro Term Loans, as applicable, made during such fiscal year pursuant to paragraph (a) of this Section, and (ii) if the Leverage Ratio for such fiscal year is greater than or equal to 0.75 to 1.0 but less than 1.25 to 1.0, (x) twenty-five percent (25%) of Excess Cash Flow for such fiscal year, minus (y) seventy-five percent (75%) of any voluntary prepayments of Term Loans and Euro Term Loans, as applicable, made during such fiscal year pursuant to paragraph (a) of this Section. All payments made pursuant to this Section 2.11(b) shall be paid on or before the earlier of (iii) the receipt by the Administrative Agent of the annual financial statements delivered pursuant to Section 5.01(a) with respect to such fiscal year and (iv) 90 days after the end of such fiscal year. No such prepayment shall be required if the Leverage Ratio for such fiscal year is less than 0.75 to 1.0. The portion of the Aggregate Excess Cash Flow Amount, if any, that the US Borrower shall prepay under this Section 2.11(b) in respect of the Term Loans shall equal (v) the Aggregate Excess Cash Flow Amount for such fiscal year multiplied by (vi) the fraction, (1) the numerator of which is the outstanding principal amount of the Term Loans three (3) Business Days prior to the date of such prepayment and (2) the denominator of which is the sum of the outstanding principal amounts

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of the Term Loans and the Euro Term Loans three (3) Business Days prior to the date of such prepayment. The portion of the Aggregate Excess Cash Flow Amount, if any, that the Euro Borrower shall prepay under this Section 2.11(b) in respect of the Euro Term Loans shall equal (x) the Aggregate Excess Cash Flow Amount for such fiscal year multiplied by (y) the fraction, (1) the numerator of which is the outstanding principal amount of the Euro Term Loans three (3) Business Days prior to the date of such prepayment and (2) the denominator of which is the sum of the outstanding principal amounts of the Term Loans and the Euro Term Loans three (3) Business Days prior to the date of such prepayment.

If any Borrower, or any of its respective Subsidiaries, receives Net Cash Proceeds from an Asset Sale or a Casualty Event, within ten (10) Business Days of the receipt of such Net Cash Proceeds, the US Borrower shall give Administrative Agent written notice ("Reinvestment Notice") of whether or not any one or more of it or its Subsidiaries intends to repair, replace or restore the asset or property or reinvest such Net Cash Proceeds in productive assets or properties or otherwise in the business or businesses of any one or more of the Borrowers or their respective Subsidiaries (collectively, the "Reinvestment"). To the extent the US Borrower has not elected for it or any of its Subsidiaries to use all such Net Cash Proceeds for Reinvestment, (i) the US Borrower shall prepay the Term Loans by the amount equal to (x) the amount of any such Net Cash Proceeds not to be so used multiplied by (y) the fraction, (1) the numerator of which is the outstanding principal amount of the Term Loans three (3) Business Days prior to the date of such prepayment and (2) the denominator of which is the sum of the outstanding principal amounts of the Term Loans and the Euro Term Loans three (3) Business Days prior to the date of such prepayment, and (ii) the Euro Borrower shall prepay the Euro Term Loans by the amount equal to (x) the amount of any such Net Cash Proceeds not to be so used multiplied by (y) the fraction, (1) the numerator of which is the outstanding principal amount of the Euro Term Loans three (3) Business Days prior to the date of such prepayment and (2) the denominator of which is the sum of the outstanding principal amounts of the Term Loans and the Euro Term Loans three (3) Business Days prior to the date of such prepayment, in each case of the immediately preceding clauses (i) and (ii) within ten (10) Business Days following the date of the Reinvestment Notice. If the US Borrower has elected for it or any of its Subsidiaries to use any such Net Cash Proceeds for Reinvestment, within one year following the date of the Reinvestment Notice (the "Reinvestment Period"), the US Borrower shall provide evidence reasonably satisfactory to the Administrative Agent that such Reinvestment has been completed on or before the end of the Reinvestment Period and to the extent any such Reinvestment has not been so completed, (iii) the US Borrower shall prepay the Term Loans by the amount equal to (x) the amount of any such Net Cash Proceeds not so used multiplied by (y) the fraction, (1) the numerator of which is the outstanding principal amount of the Term Loans three (3) Business Days prior to the date of such prepayment and (2) the denominator of which is the sum of the outstanding principal amounts of the Term Loans and the Euro Term Loans three (3) Business Days prior to the date of such prepayment, and (iv) the Euro Borrower shall prepay the Euro Term Loans by the amount equal to (x) the amount of any such Net Cash Proceeds not to be so used multiplied by (y) the fraction, (1) the numerator of which is the outstanding principal amount of the Euro Term Loans three (3) Business Days prior to the date of such prepayment and (2) the denominator of which is the sum of the outstanding principal amounts of the Term Loans and the Euro Term Loans three (3) Business Days prior to the date of such prepayment, in each case of the immediately preceding

clauses (iii) and (iv) within ten (10) Business Days following the date on which the Reinvestment Period ends.

- Each prepayment pursuant to Section 2.11(b) shall be applied to reduce pro rata all Loans comprising the designated Borrowing being prepaid with any prepayments of Term Loans or Euro Term Loans applied respectively to reduce the remaining scheduled principal installments thereof pursuant to Section 2.11(b). Each prepayment of Term Loans pursuant to paragraph (b) or (c) of this Section, as applicable, shall be applied to reduce pro rata as between the Term Loans the remaining scheduled principal installments of the Term Loans pursuant to Section 2.11(b) and if the Term Loans are fully paid then to the Revolving Loans. Each prepayment of Euro Term Loans pursuant to paragraph (b) or (c) of this Section, as applicable, and if the Euro Term Loans are fully paid then to the Euro Term Loans the remaining scheduled principal installments of the Euro Term Loans pursuant to Section 2.09 and if the Euro Term Loans are fully paid then to the Euro Revolving Loans. For purposes of determining the amount of any prepayment of Term Loans and the amount of any prepayment of Euro Term Loans pursuant to paragraph (b) or (c) of this Section, as applicable, the applicable fraction used to determine such amounts shall be calculated by the Administrative Agent in dollars, with the principal amount of the Euro Term Loans being converted to dollars using the Market Rate of Exchange three (3) Business Days prior to the date of the applicable prepayment. For purposes of this Agreement, "Market Rate of Exchange" means the spot rate of exchange as determined by the Administrative Agent for the purchase of Euros in the London, England foreign exchange market with dollars at or about 11.00 a.m., London, England time on a particular day for which a Euro amount is to be converted to a dollar amount hereunder.
- (e) The US Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 noon, New York City time, three (3) New York Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon, New York City time, one (1) New York Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., New York City time, on the date of prepayment.
- (f) The Euro Borrower shall notify the Euro Administrative Agent (and, in the case of prepayment of a Euro Swingline Loan, the Euro Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of a Eurocurrency Borrowing, not later than 11:00 a.m., London time, three (3) London Business Days before the date of prepayment or (ii) in the case of a Euro Swingline Loan, not later than 11:00 a.m., London time, on the date of prepayment.
- (g) Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of optional prepayment is given in connection with a conditional notice of termination of the Revolving Loan Commitments or Euro Revolving Loan Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Revolving Credit

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Lenders of the contents thereof. Promptly following receipt of any such notice relating to a Euro Revolving Borrowing, the Euro Administrative Agent shall advise the Euro Revolving Credit Lenders of the content thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

- Section 2.12 Fees (a) The US Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee, which shall accrue at the Commitment Fee Rate on the daily amount of the unused Revolving Loan Commitment of such Revolving Credit Lender during the period from and including the Closing Date to but excluding the date on which such Revolving Loan Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Revolving Loan Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).
- (b) The US Borrower shall pay (i) to the Administrative Agent for the account of each Revolving Credit Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Margin used to determine the interest rate applicable to Eurodollar Loans on the average daily amount of such Revolving Credit Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Credit Lender's Revolving Loan Commitment terminates and the date on which it ceases to have any LC Exposure and (ii) to the Issuing Lender a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Loan Commitments and the date on which there ceases to be any LC Exposure, but in no event less than \$500 during such period as well as the Issuing Lender's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day of such months, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Loan Commitments terminate and any such fees accruing after the date on which the Revolving Loan Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360
- (c) The Euro Borrower shall pay to the Euro Administrative Agent for the account of each Euro Revolving Credit Lender a commitment fee, which shall accrue at the Commitment Fee Rate on the daily amount of the unused Euro Revolving Loan Commitment of such Euro Revolving Credit Lender during the period from and including the Closing Date to but

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excluding the date on which such Euro Revolving Loan Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Euro Revolving Loan Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) The Euro Borrower shall pay (i) to the Euro Administrative Agent for the account of each Euro Revolving Credit Lender a participation fee with respect to its participations in Euro Letters of Credit, which shall accrue at the same Applicable Margin used to determine the interest rate applicable to Eurocurrency Loans on the average daily amount of such Euro Revolving Credit Lender's Euro LC Exposure (excluding any portion thereof attributable to unreimbursed Euro LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Euro Revolving Credit Lender's Euro Revolving Loan Commitment terminates and the date on which it ceases to have any Euro LC Exposure and (ii) to the Euro Issuing Lender a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the Euro LC Exposure (excluding any portion thereof attributable to unreimbursed Euro LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Euro Revolving Loan Commitments and the date on which there ceases to be any Euro LC Exposure, but in no event less than \$500 during such period as well as the Euro Issuing Lender's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day of such months, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Euro Revolving Loan Commitments terminate and any such fees accruing after the date

on which the Euro Revolving Loan Commitments terminate shall be payable on demand. Any other fees payable to the Euro Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

- (e) Each Borrower shall pay to the Administrative Agents as applicable, for its own account, fees payable by it in the amounts and at the times specified in the Fee Letter, or otherwise separately agreed upon, between the Borrowers and the Administrative Agents.
- (f) All fees payable hereunder to the Administrative Agent, or the Issuing Lender shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Lender, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Revolving Credit Lenders. All fees payable hereunder to the Euro Administrative Agent or the Euro Issuing Lender shall be paid on the dates due, in immediately available funds, to the Euro Administrative Agent (or to the Euro issuing Lender, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Euro Revolving Credit Lenders. Fees paid shall not be refundable under any circumstances absent manifest error.

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- Section 2.13 Interest (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin.
- (b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.
- (c) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Eurocurrency Rate plus the Applicable Margin, plus the Mandatory Cost, if any.
  - (d) Each Swingline Loan shall bear interest at the Swingline Rate, and each Euro Swingline Loan shall bear interest at the Euro Swingline Rate.
- (e) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by either Borrower hereunder is not paid when due, such overdue amount shall bear interest at the Default Rate.
- (f) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Loan Commitments and, in the case of Euro Revolving Loans, upon termination of the Euro Revolving Loan Commitments; provided that (i) interest accrued pursuant to paragraph (e) of this Section shall be payable on demand, (ii) in the event of any repayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.
- (g) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate, LIBO Rate or Eurocurrency Rate shall be determined by the Administrative Agent or the Euro Administrative Agent, as applicable, and such determination shall be conclusive absent manifest error.
  - Section 2.14 Alternate Rate of Interest If prior to the commencement of any Interest Period for a Eurodollar Borrowing or Eurocurrency Borrowing:
- (a) the Administrative Agent or the Euro Administrative Agent, as applicable, determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the LIBO Rate or the Eurocurrency Rate, as applicable, for such Interest Period; or
- (b) in the case of Eurodollar Borrowings only, the Administrative Agent is advised by the Lenders having Revolving Credit Exposure, Term Loans and unused Revolving Loan Commitments and Term Loan Commitments representing more than 50% of the sum of the

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total Revolving Credit Exposures, Term Loans and such unused Commitments at such time that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent or the Euro Administrative Agent, as applicable, shall give notice thereof to the US Borrower or the Euro Borrower, as applicable, and the Revolving Credit Lenders and the Term Lenders or the Eurocurrency Lenders, as applicable, by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent or the Euro Administrative Agent, as applicable, notifies the US Borrower and such Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, (ii) if any Borrowing Request requests a Eurocurrency Borrowing, such request shall be deemed to be withdrawn.

## Section 2.15 <u>Increased Costs</u> (a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate or the Mandatory Cost) or the Issuing Lender or Euro Issuing Lender; or
- (ii) impose on any such Lender or the Issuing Lender, Euro Issuing Lender or the London interbank market or the European Union banking market any other condition affecting this Agreement or Eurodollar Loans or the Eurocurrency Loans made by such Lender or any Letter of Credit, Euro Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost (other than with respect to Taxes, which shall be governed solely by Section 2.17) to such Lender of making or maintaining any Eurodollar Loan or Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Lender or Euro Issuing Lender of participating in, issuing or maintaining any Letter of Credit or Euro Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender or Euro Issuing Lender hereunder (whether of principal, interest or otherwise), then the US Borrower will pay to any such Revolving Credit Lender, Term Lender or the Issuing Lender and the Euro Borrower will pay to any such Euro Revolving Credit Lender, Euro Term Lender or the Euro Issuing Lender, as applicable, such additional amount or amounts as will compensate such Lender or the Issuing Lender or the Euro Issuing Lender, as applicable, for such additional costs incurred or reduction suffered.

(b) If any Lender, the Issuing Lender or the Euro Issuing Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's or the Euro Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's or the Euro Issuing Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Euro Letters of Credit held

by the Issuing Lender, or the Euro Letters of Credit issued by the Euro Issuing Lender, to a level below that which such Lender or the Issuing Lender or the Euro Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's or the Euro Issuing Lender's holding company with respect to capital adequacy), then from time to time the US Borrower will pay to any such Revolving Credit Lender, Term Lender or the Issuing Lender and the Euro Borrower will pay to such Euro Revolving Credit Lender, Euro Term Lender or the Euro Issuing Lender, as applicable, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for any such reduction suffered.

- (c) A certificate of a Lender or the Issuing Lender or the Euro Issuing Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Lender or the Euro Issuing Lender or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section (subject to paragraph (e) of this Section) shall be delivered to the US Borrower or the Euro Borrower, as applicable, and shall be conclusive absent manifest error. The US Borrower shall pay any such Revolving Credit Lender, Term Lender or the Issuing Lender and the Euro Borrower shall pay any Euro Revolving Credit Lender, Euro Term Lender or Euro Issuing Lender, as applicable, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.
- (d) Failure or delay on the part of any Lender or the Issuing Lender or the Euro Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Lender's or the Euro Issuing Lender's right to demand such compensation; provided that no Borrower shall be required to compensate a Lender or the Issuing Lender or the Euro Issuing Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Lender, as applicable, notifies such Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Lender's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof; provided, further, that no Lender shall seek compensation from either Borrower unless such Lender is actively seeking compensation from other similarly situated borrowers as well.
- (e) Notwithstanding anything to the contrary under paragraphs (a) and (b) of this Section, neither paragraph (a) nor paragraph (b) of this Section shall apply to the extent the amount or amounts necessary to compensate such Lender or the Issuing Lender or the Euro Issuing Lender or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section is (i) a Tax on the overall net income of a Lender or any of its Affiliates, (ii) attributable to the gross negligence of a Lender or its Affiliate that results in its failing to comply with any Law, (iii) attributable to any deduction or withholding for or on account of Tax from a payment under any Loan Document required by law to be made by any Obligor, (iv) any Tax or any amount relating to Taxes, (v) compensated for by the payment of Mandatory Cost, or (vi) incurred as a direct or indirect consequence of the recommendations by

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the Basel Committee on Banking Supervision (also known as the "Basel II" or the "New Accord") or their implementation or both.

Section 2.16 Break Funding Payments In the event of (a) the payment of any principal of any Eurodollar Loan or any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan or any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto or (c)the failure to borrow, convert, continue or prepay any Eurodollar Loan or any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(g) and is revoked in accordance therewith), then, in any such event, the Borrowers shall compensate each Lender, as applicable, for the loss, cost and expense (other than any lost profit or margin) attributable to such event. In the case of a Eurodollar Loan or a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to include an amount reasonably determined by such Lender to be the excess, if any, of (i) its costs of obtaining funds for the Loan being paid, prepaid or converted or not borrowed (based on the Adjusted LIBO Rate or the Eurocurrency Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would realize by such Lender in reemploying during such period the funds so paid, prepaid, converted or not borrowed. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the US Borrower and shall be conclusive absent manifest error. The US Borrower shall pay any such Revolving Credit Lender, Term Lender or the Is

Section 2.17 Taxes (a) Any and all payments by or on account of any obligation of any Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if such Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agents, any Lender, the Issuing Lender or the Euro Issuing Lender (as applicable) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

- (b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.
- (c) The Borrowers shall indemnify the Administrative Agents, each Lender, the Issuing Lender and the Euro Issuing Lender, within 10 days after written demand therefor, for

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the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agents, such Lender, the Issuing Lender or the Euro Issuing Lender, as applicable, on or with respect to any payment by or on account of any obligation of the Borrowers hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Euro Borrower shall have no liability under this Section 2.17(c) with respect to Indemnified Taxes or Other Taxes attributable to any Loan made to or other Obligation of the US Borrower. A certificate as to the amount of such payment or liability delivered to the Borrower by such Lender, Issuing Lender or Euro Issuing Lender, or by the relevant Administrative Agents on its own behalf or on behalf of such Lender, Issuing Lender or Euro Issuing Lender manifest error.

the relevant Administrative Agents the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the relevant Administrative Agents.

(e) Any Lender, the Issuing Lender or the Euro Issuing Lender, if requested by the US Borrower, Euro Borrower or Administrative Agent, shall deliver documentation prescribed by applicable law or reasonably requested by such Borrower or the Administrative Agent as will enable such Borrower or the Administrative Agent to determine whether or not such Lender, the Issuing Lender or the Euro Issuing Lender is subject to withholding, backup withholding or information reporting requirements. Without limiting the generality of the foregoing, each Lender or Issuing Lender (other than a Foreign Lender) shall deliver to the US Borrower and the Administrative Agent two (2) duly completed copies of U.S. Internal Revenue Service Form W-9 (or other evidence of an exemption from withholding and backup withholding acceptable to the US Borrower and the Administrative Agent) on or prior to the date on which such Person becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the US Borrower and the Administrative Agent), and each Foreign Lender shall deliver to the US Borrower and the Administrative Agent (in such number of copies as is specified below or as shall be required by the US Borrower and the Administrative Agent) on or prior to the date on which such Foreign Lender becomes a Lender or a participant under this Agreement (and from time to time thereafter upon the reasonable request of the US Borrower or the Administrative Agent), whichever of the following is applicable to enable the US Borrower and the Administrative Agent to make all payments required under the Loan Documents without deduction or withholding in respect of Tax or, in the case of a Foreign Lender to whom payments under the Loan Documents are not eligible for a complete exemption, at a reduced rate of deduction or withholding in respect of Tax: (i) two (2) duly completed copies of U.S. Internal Revenue Service Form W-8BEN, certifying its eligibility for benefits of an income tax treaty to which the United Stat

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certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the US Borrower, within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) two (2) duly completed copies of U.S. Internal Revenue Service Form W-8BEN, or (iv) two (2) duly completed copies of U.S. Internal Revenue Service Form W-8IMY (together with forms listed under clauses (i) through (iii) hereof, as may be required) or (v) any other form prescribed by applicable law as a basis for claiming exemption from or, if a complete exemption is not available, a reduction in U.S. federal withholding tax and reasonably requested by the US Borrower or Administrative Agent duly completed together with such supplementary documentation as may be prescribed by applicable law and reasonably requested by the US Borrower or Administrative Agent to permit such Person to determine the withholding or deduction required to be made. In each case, if a specified form is no longer in use, the delivery obligation specified in this Section 2.17(e) shall apply to the applicable successor form. In addition, the request of the US Borrower or the Euro Borrower, each Lender and any participant shall deliver such forms promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Lender or participant.

(f) If either of the Administrative Agents or a Lender (which, for purposes of this Section 2.17 shall include any Issuing Lender or Euro Issuing Lender) determines, in its sole discretion, that it has received a refund or reimbursement of any Taxes or Other Taxes as to which it has been indemnified by any Borrower or with respect to which any Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund or reimbursement to the relevant Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the relevant Borrower under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund or reimbursement), net of all out-of-pocket expenses of the Administrative Agents or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or reimbursement); provided, that the relevant Borrower, upon the request of the Administrative Agents or such Lender, agrees to repay the amount paid over to the relevant Borrower pursuant to this Section 2.17(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agents or such Lender in the event either of the Administrative Agents or such Lender is required to repay such refund or reimbursement to such Governmental Authority. This Section shall not be construed to require the Administrative Agents or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs; Sharing of Collateral Proceeds and Payments After Default (a) The US Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, Section 2.16 or Section 2.17, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. The Euro Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of Euro LC Disbursements, or of amounts payable under Section 2.15, Section 2.16 or Section 2.17, or otherwise) prior to 1:00 p.m., London, England time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such times on any

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date may, in the discretion of the Administrative Agent in the case of payments by the US Borrower or the Euro Administrative Agent in the case of payments by the Euro Borrower, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments by the US Borrower with respect to the Revolving Credit Loans and the Term Loans shall be denominated in dollars and shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to the Issuing Lender or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.16, Section 2.17 and Section 10.03 shall be made directly to the Persons entitled thereto. All such payments by the Euro Borrower with respect to the Euro Revolving Credit Loans and the Euro Term Loans shall be denominated in Euros and shall be made to the Euro Administrative Agent at the place designated by the Euro Administrative Agent in its notice therefore except payments to be made directly to the Euro Issuing Lender or Euro Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.17 or Section 10.03 shall be made directly to the persons entitled thereto. Each of the Administrative Agent and the Euro Administrative Agent, as applicable, shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

- (b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and, with respect to funds received for payment on the Revolving Credit Loans, the Term Loans or unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties. If at any time insufficient funds are received by and available to the Euro Administrative Agent to pay fully all amounts of principal, unreimbursed Euro LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and, with respect to funds received for payment on the Euro Revolving Credit Loans, the Euro Term Loans or unreimbursed Euro LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed Euro LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed Euro LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed Euro LC Disbursements
- (c) Subject to the provisions of Section 2.18(d), if any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements, Euro LC Disbursements, Swingline Loans or Euro Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements. Euro LC Disbursements, Swingline Loans and Euro Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender

receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements, Euro LC Disbursements, Swingline Loans and Euro Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by (i) the Revolving Credit Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Credit Loans and participations in LC Disbursements and Swingline Loans, (ii) Term Lenders ratably in accordance with the aggregate amount of principal and accrued interest on their respective Term Loans, (iii) the Euro Revolving Credit Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Euro Revolving Loans, and (iv) Euro Term Lenders ratably in accordance with the aggregate amount of principal and accrued interest on their respective Euro Term Loans; provided that (x) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (y) the provisions of this paragraph shall not be construed to apply to any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Euro LC Disbursements to any assignee or Participant, other than to either Borrower or any Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as

(d) Following acceleration of the Loans pursuant to this Agreement, if at any time any payment on any of the Loans or any receipt of proceeds from any collateral results in the Revolving Credit Lenders, the Term Lenders, the Euro Revolving Credit Lenders or Euro Term Lenders receiving payments or proceeds in excess of their Class Percentage (defined below) of all such payments or proceeds received, such Lenders will deliver any excess to the Administrative Agent and the Administrative Agent shall redistribute such excess to the extent required such that each category of the Revolving Credit Lenders, the Term Lenders and the Euro Revolving Credit Lenders shall receive their Class Percentage of such payment or proceeds. All payments to the Administrative Agent shall be made in dollars. As used herein, the term "Class Percentage" for each category of the Revolving Credit Lenders, Term Lenders, Euro Term Lenders and the Euro Revolving Credit Lenders shall mean the percentage, expressed as a decimal and determined by dividing the total Obligations, including obligations under Swap Agreements with such Lenders, outstanding for each category of the Revolving Credit Lenders, the Term Lenders or the Euro Revolving Credit Lenders by the aggregate total Obligations, including obligations under Swap Agreements with all Lenders, outstanding after giving effect to such payment or receipt of proceeds, all as calculated by the Administrative Agent whose calculation shall be conclusive absent manifest error. For purposes of calculating the Class Percentage, all payments, proceeds and Loan amounts shall be deemed to be in dollars, with any necessary conversions being made at the rates determined by the Administrative Agent on the date of any receipt of funds. For purposes of determining the amount of any payment to be made to the Administrative Agent in dollars under this paragraph from any Euro Revolving Credit Lender or Euro Term Lender, the

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amount in dollars payable in respect of any Eurocurrency Loan shall be converted to dollars at the rates determined by the Administrative Agent on receipt of funds.

- (e) Unless the Administrative Agent shall have received notice from the US Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Revolving Credit Lenders, the Term Lenders or the Issuing Lender hereunder that the US Borrower will not make such payment or the Euro Administrative Agent shall have received notice from the Euro Borrower prior to the date on which any payment is due to the Euro Administrative Agent for the account of the Euro Revolving Credit Lenders, the Euro Term Lenders or the Euro Issuing Lender hereunder that the Euro Borrower will not make such payment, the Administrative Agent or the Euro Administrative Agent, as applicable, may assume that the US Borrower or the Euro Borrower, as applicable, has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Revolving Credit Lenders, the Euro Revolving Credit Lenders, the Euro Borrower or the Euro Borrower, as applicable, has not in fact made such payment, then each of the Revolving Credit Lenders, the Furn Lenders, the Euro Borrower, as applicable, has not in fact made such payment, then each of the Revolving Credit Lenders, the Euro Revolving Credit Lenders, the Euro Borrower, as applicable, has not in fact made such payment, then each of the Revolving Credit Lenders, the Euro Revolving Credit Lenders, the Euro Borrower, as applicable, has not in fact made such payment, then each of the Revolving Credit Lenders, the Euro Revolving Credit Lenders, the Euro Borrower, as applicable, has not in fact made such payment, then each of the Revolving Credit Lenders, the Euro Revolving Credit Lenders, the Euro Borrower or the Euro Borrower, as applicable, has not in fact made such payment, then each of the Revolving Credit Lenders, the Euro Revolving Credit Lenders, the Euro Borrower or the Euro Borrower, as applicable, has not in fact made such payment, then the Euro Borrower, as applicable, has not in fact made such payment or the Euro Borrower, a
- (f) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(a)(iii) or Section 2.04(b)(iii), Section 2.05(d) or Section 2.05(e), Section 2.06(e), Section 2.06(e), Section 2.06(e), Section 2.07(b), Section 2.18(e) or Section 10.03(c), then the Administrative Agent or the Euro Administrative Agent, as applicable, may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by it for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.
- Section 2.19 <u>Mitigation Obligations; Replacement of Lenders</u> (a) If any Lender requests compensation under <u>Section 2.15</u> or <u>Section 2.17</u>, or if the US Borrower or the Euro Borrower, as applicable, is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to <u>Section 2.17</u>, then such Lender shall cooperate in completing any procedural formalities required for each of the Borrowers to be able to make payments under the Loan Documents without any deduction or withholding in respect of Indemnified Taxes or Other Taxes and shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts

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payable pursuant to <u>Section 2.15</u> or <u>Section 2.15</u>, as applicable, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The US Borrower shall pay all reasonable costs and expenses incurred by any Revolving Credit Lender or Term Lender or the Issuing Lender in connection with any such designation or assignment. The Euro Borrower shall pay all reasonable costs and expenses incurred by any Euro Revolving Credit Lender or Euro Term Lender or the Euro Issuing Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15 or Section 2.17, or if the US Borrower or the Euro Borrower, as applicable, is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender defaults in its obligation to fund Loans hereunder, then the US Borrower or the Euro Borrower, as applicable, may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the US Borrower or the Euro Borrower, as applicable, shall have received the prior written consent of the Administrative Agent or the Euro Administrative Agent, as applicable, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans or Euro LC Disbursements and Euro Swingline Loans, as applicable, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, as applicable, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the US Borrower or the Euro Borrower, as applicable (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will or is expected to result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation cease to apply.

#### ARTICLE III

## Representations and Warranties

The Borrowers for themselves and their respective Subsidiaries represent and warrant to the Administrative Agents and the Lenders that:

Section 3.01 Organization Except as set forth on Schedule 3.01 each Obligor and its respective Subsidiaries (with respect to any Foreign Obligor or Foreign Subsidiary, only to the extent applicable) (i) is duly organized, validly existing and, with respect to each Obligor other than any Foreign Subsidiary in good standing under the Laws of the jurisdiction of its organization, (ii) has the requisite power and authority to conduct its business as it is presently being conducted, and (iii) is duly qualified or licensed to conduct business and is in good

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standing in each jurisdiction where such qualification or good standing is required, except where the failure to so qualify or be in good standing could not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 <u>Authority Relative to this Agreement</u> Each Obligor has the power and authority to execute and deliver this Agreement and the other Loan Documents to which it is a party and to perform its obligations hereunder and thereunder. The Transactions have been duly authorized by all necessary corporate or other entity action, as applicable, on the part of each Obligor that is a party hereto or thereto. This Agreement and the other Loan Documents have been duly and validly executed and delivered by each Obligor party hereto or thereto and constitute the legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with their respective terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting creditors' rights and remedies generally and to the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding at Law or in equity).

Section 3.03 No Violation Except as set forth on Schedule 3.03, neither the Transactions nor the Acquisition will:

- (a) result in a breach of the articles or certificate of incorporation, bylaws, partnership agreement, limited liability company agreement or other organization documents, as applicable, of any Obligor or any of its respective Subsidiaries;
- (b) result in the imposition of any Lien on any asset of any Obligor or any of its respective Subsidiaries (including the Equity Interests of any of the Subsidiaries of the Borrowers), other than the Liens created under the Loan Documents;
- (c) result in, or constitute an event that, with the passage of time or giving of notice or both, would be, a breach, violation or default (or give rise to any right of termination, cancellation, prepayment or acceleration) under (i) any agreement to which any Obligor or any of its respective Subsidiaries is a party, under which any Obligor or any of its respective Subsidiaries has or may acquire rights or obligations or by which its respective properties or assets may be bound or (ii) any Governmental Approval held by, or required for the conduct of the business of, any Obligor or any of its respective Subsidiaries, in each case of (i) and (ii) above, where such breach, violation or default could reasonably be expected to result in a Material Adverse Effect;
- (d) require any Obligor or any of its respective Subsidiaries to obtain any consent, waiver, approval, exemption, authorization or other action of, or make any filing with or give any notice to, any Person except (i) such as have been obtained or made and are in full force and effect or waived, (ii) filings necessary to perfect or assign Liens created under the Loan Documents or (iii) filing of this Agreement and one or more other Loan Documents with the Securities and Exchange Commission on the appropriate form; or
- (e) violate any Law or Order applicable to any Obligor or any of its respective Subsidiaries or by which any of their respective properties or assets may be bound, where such violation could reasonably be expected to result in a Material Adverse Effect.

- Section 3.04 Financial Statements The US Borrower has previously furnished to the Administrative Agent the following financial statements (collectively, the "Financial Statements"): (i) the audited consolidated balance sheet of the US Borrower as of December 31, 2006, and the related consolidated statements of operations, stockholders' equity and cash flows for the fiscal year then ended, the notes accompanying such Financial Statements, and the report of Ernst & Young LLP, independent certified public accountants, and (ii) the unaudited consolidated balance sheet of the US Borrower as of September 30, 2007, and the related statements of operations, stockholders' equity and cash flows for the period then ended. The Financial Statements fairly present in all material respects the consolidated financial position of the US Borrower as of their respective dates and the consolidated results of operations and cash flows of the US Borrower for the periods ended on such dates in accordance with GAAP, subject, in the case of interim financial statements, to absence of footnotes and year-end audit adjustments (the effect of which will not, individually or in the aggregate, have a Material Adverse Effect). Since December 31, 2006, there has been no material adverse change in the US Borrower's consolidated financial position that could reasonably be expected to result in a Material Adverse Effect).
- Section 3.05 No Undisclosed Liabilities Except as set forth in Schedule 3.05, none of the Obligors or any of their respective Subsidiaries has any liabilities or obligations of any nature (whether known or unknown, and whether absolute, accrued, contingent or otherwise) except for (i) liabilities or obligations reflected or reserved against in the financial statements most recently delivered by the US Borrower pursuant to Section 4.01(g) or Section 5.01, as applicable, (ii) current liabilities or obligations incurred in the ordinary course of business since the date of such financial statements, (iii) liabilities or obligations that are not required to be included in financial statements prepared in accordance with GAAP, (iv) liabilities or obligations arising under Governmental Approvals or contracts to which any Obligor or any of its respective Subsidiaries is a party or otherwise subject, (v) liabilities or obligations that could not reasonably be expected to result in a Material Adverse Effect and (vi) other Permitted Indebtedness.
- Section 3.06 <u>Litigation</u> <u>Schedule 3.06</u> briefly describes each action, suit or proceeding pending before any Governmental Authority or arbitration panel, or to the knowledge of the Borrowers, threatened, (i) which seeks to prevent, enjoin or delay any of the Transactions or the Acquisition, or (ii) against any Obligor or any of its respective Subsidiaries regarding the business of, or assets owned or used by, any of them as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.
- Section 3.07 <u>Compliance with Law</u> Except as set forth on <u>Schedule 3.07</u>, (i) each Obligor and its respective Subsidiaries is in compliance with each Law that is applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets, except where the failure to be in compliance, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; and (ii) none of the Obligors or any of their respective Subsidiaries has received any notice of, nor does either of the Borrowers have knowledge of, the assertion by any Governmental Authority or other Person of any such failure to be in compliance.

- Section 3.08 <u>Material Contracts</u> <u>Schedule 3.08</u> lists as of the Closing Date each Material Contract to which any Obligor or any of its respective Subsidiaries is a party. Except as set forth in <u>Schedule 3.08</u>, (i) neither of the Borrowers is aware of any pending or threatened termination or cancellation of any of Material Contract or any notice of any assertion by any party thereto of any material default thereunder, (ii) none of the Obligors or any of their respective Subsidiaries nor, to the knowledge of either of the Borrowers, any other party to a Material Contract is in default of any material obligation thereunder, and (iii) no other event has occurred and no other condition exists that, with notice or lapse of time or both, would constitute a default by any Obligor or any of its respect Subsidiaries or, to either of the Borrowers' knowledge, any other party under any Material Contract, in each case of (i), (ii) and (iii) above, which could reasonably be expected to result in a Material Adverse Effect.
- Section 3.09 Properties Schedule 3.09 lists as of the Closing Date each interest in (i) real property owned by the US Borrower and (ii) real property leased or otherwise occupied or used by the US Borrower as a lessee or licensee. Each of the Obligors and its respective Subsidiaries owns (with good and marketable title in the case of real property, subject only to the matters permitted by the following sentence), or has valid leasehold interests or licenses in, all the properties and assets (whether real, personal, or mixed and whether tangible or intangible) material to its respective businesses. All such properties and assets are free and clear of all Liens, except Permitted Liens, and are not, in the case of real property, subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature. All such properties (i) are in good operating order, condition and repair (ordinary wear and tear excepted), as applicable, and (ii) constitute all of the property that is required for the respective business and operations of the Obligors and their respective Subsidiaries as presently conducted.
- Section 3.10 Intellectual Property (a) Schedule 3.10 lists as of the Closing Date all material patents, patent applications, registered trademarks, trademark applications, registered trade names, registered service marks, and registered copyrights (the "Intellectual Property") owned by or licensed to the US Borrower or any of its Subsidiaries (excluding Nobelclad Europe S.A. and Nitro Metall AB and the Subsidiaries of the Target and DYNAenergetics Beteiligungs GmbH). As of the date of this Agreement, none of the Intellectual Property owned by or licensed to any Obligor or its respective Subsidiaries has been declared invalid or is the subject of a pending or, to the knowledge of the Borrowers, threatened action for cancellation or a declaration of invalidity, and there is no pending judicial proceeding involving any claim, and none of the Obligors or any of their respective Subsidiaries has received any written notice or claim of any infringement, misuse or misappropriation by any Obligor or any of its respective Subsidiaries of any Intellectual Property right owned by any third party, in each case except for any such declaration, cancellation, proceeding, infringement, misuse or misappropriation which could not reasonable be expected to result in a Material Adverse Effect.
- (b) To the Borrowers' knowledge, except as set forth in Schedule 3.10, the conduct by any of the Obligors or any of their respective Subsidiaries of their respective businesses as presently conducted does not conflict with, infringe on, or otherwise violate any copyright, trade secret, or patent rights of any Person, except where such conflict, infringement or violation could not reasonably be expected to have a Material Adverse Effect.

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- Section 3.11 Taxes All Tax returns and reports of any of the Obligors and their respective Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such Tax returns and reports to be due and payable and all assessments, fees and other governmental charges upon any of them and upon any of their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable except to the extent being actively contested by any of them in good faith and by appropriate proceedings or, with respect to any Subsidiary that is not a Wholly Owned Subsidiary, except to the extent any failure to so file and pay would not result in a Material Adverse Effect; provided that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefore. As of the date of this Agreement, neither Borrower knows of any proposed Tax assessment against any of the Obligors or any of their respective Subsidiaries that is not being actively contested by any of them in good faith and by appropriate proceedings; provided that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor, which assessment could reasonably be expected to result in a Material Adverse Effect.
- Section 3.12 <u>Environmental Compliance</u> In each case, except to the extent such condition or event, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect and except as set forth in <u>Schedule 3.12</u>,
- (a) none of the Obligors or any of their respective Subsidiaries has failed to comply with any Environmental Law or to obtain, maintain or comply with any Governmental Approval required under any Environmental Law or has become subject to any Environmental Liability;
- (b) none of the Obligors or any of their respective Subsidiaries has received any notice of any claim with respect to any such Environmental Liability and the US Borrower does not know of any basis for any such Environmental Liability;
- (c) none of the Obligors or any of their respective Subsidiaries has arranged for the disposal of Hazardous Material at a site listed for investigation or clean-up by any Governmental Authority or in violation of Law;
- (d) there is no proceeding pending against any of the Obligors or any of their respective Subsidiaries by any Governmental Authority with respect to the presence on or release of any Hazardous Material from any real property or facility owned or operated at any time by any of them or otherwise used in connection with their respective businesses;
- (e) the US Borrower has no knowledge that any Hazardous Material has been or is currently being generated, processed, stored or released (or is subject to a threatened Release) from, on or under any real property or facility owned or operated by any of the Obligors or any of their respective Subsidiaries, or otherwise used in connection with their respective businesses in a quantity or concentration that would require remedial action under any Environmental Law if reported to or discovered by the relevant Governmental Authority; and

- (f) to the knowledge of the US Borrower, there has been no underground storage tank located at any facility owned or operated by any of the Obligors or any of their respective Subsidiaries at any time.
- Section 3.13 <u>Labor Matters</u> As of the Closing Date, there are no strikes, lockouts or slowdowns against any of the Obligors or any of their respective Subsidiaries pending or, to the knowledge of the Borrowers, threatened. The hours worked by and payments made to employees of the US Borrower have not been in violation of the Fair Labor Standards Act or any other Law dealing with such matters. All payments due from any of the Obligors or any of their respective Subsidiaries, or for which any claim may be made against any of them, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of any of the Obligors or any of their respective Subsidiaries. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any of the Obligors or any of their respective Subsidiaries is bound.
- Section 3.14 Investment and Holding Company Status Neither the US Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.
- Section 3.15 Insurance As of the Closing Date, Schedule 3.15 lists all policies or binders of fire, liability, worker's compensation, vehicular or other insurance held by or for the benefit of the US Borrower (specifying the insurer, the policy number or covering note number with respect to binders). All insurance held by or for the benefit of the any of the Obligors or any of their respective Subsidiaries is in full force and effect, is with financially sound and reputable insurers and is in amounts and

provides coverage that are reasonable and customary for Persons engaged in businesses similar to those conducted by any of the Obligors or any of their respective Subsidiaries.

- Section 3.16 Solvency Immediately after the consummation of the Transactions and the Acquisition to occur on the Closing Date, and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair market value of the assets of each Obligor will exceed its debts and liabilities; (b) the present fair saleable value of the property of each Obligor will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities; (c) each Obligor will be able to pay its debts and liabilities as they become absolute and mature; and (d) no Obligor will have unreasonably small capital with which to conduct its business as such business is now conducted and is proposed to be conducted following the Closing Date.
- Section 3.17 <u>ERISA</u> No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.
- Section 3.18 <u>Disclosure</u> The Borrowers have disclosed to the Lenders all factual matters of which the senior executive officers of the Borrowers have actual knowledge (other than general industry and economic conditions and legal and regulatory requirements applicable to companies and businesses similar to the members generally), that, individually or in the

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aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor the other reports, financial statements, certificates or other information furnished by or on behalf of any Obligor to the Administrative Agents or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contained, as of the date furnished, any material misstatement of fact or omitted to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that no assurance has been given or will be given that any projected financial information and other projections and forward-looking information have been or will be achieved).

Section 3.19 <u>Margin Stock</u> Except for repurchases of the US Borrower's Equity Interests in accordance with the last sentence of this <u>Section 3.19</u> and <u>Section 5.08</u> and <u>Section 6.07</u>, no part of any Borrowing or any Swing Loan shall be used at any time, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying any margin stock. None of the Borrowers nor any of their Subsidiaries are engaged principally, or as one of its important activities, in the business of extending credit for the purposes of purchasing or carrying any such margin stock. No part of the proceeds of any Borrowing will be used for any purpose which violates, or which is inconsistent with, any regulations promulgated by the Board of Governors of the Federal Reserve System.

# ARTICLE IV

#### Conditions

- Section 4.01 <u>Effective Date</u> The obligations of the Lenders to make Loans and of the Issuing Lender to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with <u>Section 10.02</u>):
- (a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.
- (b) The Administrative Agent (or its counsel) shall have received each of the Security Documents from each applicable Obligor and same shall constitute satisfactory security documentation to create first priority security interests in the Collateral free and clear of all Liens, other than Permitted Liens.
- (c) The Administrative Agent shall have received such documents and certificates as the Administrative Agents or their counsel may reasonably request relating to the organization, existence and, where applicable, good standing of each Obligor, the authorization of the Transactions and the Acquisition, the authority of each natural Person executing any of the Loan Documents on behalf of any Obligor and any other legal matters relating to the Obligors,

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this Agreement or the Transactions and the Acquisition, all in form and substance reasonably satisfactory to the Administrative Agents and their counsel.

- (d) Each Lender requesting a promissory note evidencing Loans made by such Lender shall have received from the applicable Borrower a promissory note payable to such Lender in a form approved by the Administrative Agents in their sole discretion.
- (e) The Administrative Agents shall have received all fees and other amounts due and payable on or prior to the Effective Date, and to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by any Borrower hereunder.
- (f) All material governmental and third party approvals and permits necessary in connection with the Transactions, the Acquisition and the continued operations of the Obligors shall have been obtained and be in full force and effect and copies thereof shall have been provided to Administrative Agent (or its counsel).
- (g) The Lenders shall have received (i) audited consolidated financial statements of the US Borrower for the most recent fiscal year of the US Borrower ended December 31, 2006, (ii) unaudited consolidated financial statements of the US Borrower for the three-month period ended September 30, 2007 and (iii) unaudited financial statements of the Target in accordance with German GAAP for its most recent three (3) fiscal years (with the statements for 2005 and 2006 translated into English) in each case reasonably satisfactory to the Administrative Agent.
- (h) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (i) Holme Roberts & Owen LLP, counsel for the Borrowers, covering such matters as the Administrative Agent shall reasonably request, (ii) local Pennsylvania and Connecticut counsel for the Borrowers, concerning enforceability and other matters related to the Mortgages and such other matters as the Administrative Agent shall reasonably request and (iii) French, Swedish, and German counsel to the Borrowers concerning the authority of Foreign Subsidiaries of the Borrowers that are Wholly Owned Subsidiaries to enter into the Transactions and such other matters as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsels to deliver such opinions.
- (i) The Administrative Agent shall have received reports of UCC, tax and judgment Lien searches or other similar searches conducted by a reputable search firm with respect to each Borrower and its respective Subsidiaries in each location requested by the Administrative Agents and the information disclosed in such reports shall be satisfactory to the Administrative Agents.
  - (j) The Lenders shall have received details of the legal and capital structure of the Borrowers which shall be reasonably satisfactory to the Lenders.

(k) All membership and stock certificates, if any, of each Subsidiary of the US Borrower described on Annex 3 to the Security Agreements will be delivered to Administrative Agent together with, as appropriate, related stock and membership powers executed in blank by the relevant Obligor.

- (l) The Administrative Agent shall have received evidence satisfactory to the Administrative Agent that substantially simultaneously with the initial Borrowing the Indebtedness identified on Schedule 4.01(l) hereto will be paid in full.
- (m) The US Borrower shall have issued common stock representing not less than 13.5% of the aggregate purchase price for the Acquisition. The fees and expenses related to the Acquisition shall not exceed \$5,000,000.
  - (n) The Arranger shall have reviewed and be reasonably satisfied with the definitive documents in connection with the Acquisition Agreement.
- (o) The Administrative Agent shall have received satisfactory evidence that the Acquisition has been, or substantially simultaneously with the initial Borrowing will be, consummated.
- (p) The Leverage Ratio shall be no greater than 2.0 to 1.00. For purposes of this paragraph, the Leverage Ratio shall be calculated on a pro forma basis for the trailing four-quarter period ended September 30, 2007 giving effect to the Transactions and the Acquisition as if such Transactions and Acquisition were consummated at the commencement of such four-quarter period.
- (q) The Administrative Agents shall have received a solvency certificate reasonably satisfactory to it from the chief financial officer of the US Borrower that shall certify as to the solvency of the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP after giving effect to the Acquisition and the other transactions contemplated hereby.
- (r) The Administrative Agent shall have received the Phase I environmental reports and other environmental information in the possession of or available to the US Borrower and covering the Mortgaged Property listed on <u>Schedule 4.01(r)</u>.
- (s) A pro forma of a mortgagee's policy of title insurance for each of the Mortgaged Properties in a form promulgated by the American Land Title Association, insuring the lien of the Mortgages as a valid first lien on the Mortgaged Property free and clear of all defects and encumbrances except as approved by Administrative Agent. Each pro forma title policy shall be in the amount designated by the Administrative Agent and shall contain such endorsements as required by Administrative Agent.
- (t) The Administrative Agent shall have been provided a copy of any lease agreement covering the Mortgaged Property held by any of the US Borrower or its Domestic Subsidiaries.
- (u) The Administrative Agent shall have received a consent agreement executed by the owner of the leased property described in Section 4.01(t), which agreement shall be satisfactory in all respects to the Administrative Agent.
- (v) The Administrative Agent shall have received evidence of insurance coverage of each Borrower and its Subsidiaries satisfying the requirements of <u>Section</u> 5.05(b); the

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Administrative Agent shall have been named as an additional insured and as a mortgagee/loss payee on the liability and casualty insurance policies covering the Mortgaged Property.

- (w) The Administrative Agent shall have received calculations showing the sources and uses of funds in connection with the Acquisition and the Loans funded on the Closing Date.
- (x) The Administrative Agent shall have received all documents and other items that it may reasonably request relating to any other matters relevant hereto, all in form and substance reasonably satisfactory to the Administrative Agent.
- Section 4.02 <u>Each Credit Event</u> The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Lender and the Euro Issuing Lender to issue, amend, renew or extend any Letter of Credit or Euro Letter of Credit, is subject to the satisfaction of the following conditions:
  - (a) The representations and warranties of each Obligor set forth in this Agreement or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit or Euro Letter of Credit, as applicable; provided, that to the extent any such representation and warranty was made as of a specific date, such representation and warranty shall be true and correct in all material respects as of such specific date.
    - (b) No Material Adverse Effect shall have occurred since the date of the most recent Borrowing.
- (c) The Administrative Agents shall have received a request for a Borrowing as required by <u>Section 2.03</u> or the Issuing Lender and the Administrative Agent or the Euro Issuing Lender and the Euro Administrative Agent, as applicable, shall have received a request for the issuance of a Letter of Credit or a Euro Letter of Credit, as applicable, as required by <u>Section 2.05(b)</u> or <u>Section 2.05(b)</u>, as applicable.
- (d) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit or Euro Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit or Euro Letter of Credit shall be deemed to constitute a representation and warranty by the relevant Obligors on the date thereof as to the matters specified in paragraphs (a) and (c) of this <u>Section 4.02</u>.

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed:

Section 5.01 Financial Statements and Other Information The US Borrower will furnish to the Administrative Agents and each Lender:

- (a) within 90 days after the end of each fiscal year of the US Borrower, the audited consolidated balance sheet and related statements of operations, cash flows and shareholders' equity as of the end of and for such year of the US Borrower, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the US Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;
- (b) within 45 days after the end of the first three fiscal quarters of each fiscal year of the US Borrower, the consolidated balance sheet and related statements of operations, cash flows and shareholders' equity as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year for the US Borrower, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the US Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;
- (c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the US Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.15 and Section 6.16 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the last audited financial statements delivered pursuant to Section 5.01(a) and, if any such change has occurred, specifying the effect such change would have on the financial statements accompanying such certificate;
- (d) promptly after the same become available, copies of all periodic and other reports, proxy statements and other materials filed by the US Borrower with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as applicable;

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- (e) within 90 days following the commencement of each fiscal year, the US Borrower and its Subsidiaries operating and capital expenditure budgets and cash flow forecast for such fiscal year (which shall include a projected combined balance sheet summary for the US Borrower and its Subsidiaries of the last day of such fiscal year and the related projected statements of combined income and cash flows for such fiscal year);
- (f) promptly upon receipt of any complaint, order, citation, notice or other written communication from any Person with respect to, or upon any Obligor's obtaining knowledge of, (i) the existence or alleged existence of a violation of any applicable Environmental Law or any Environmental Liability in connection with any property now or previously owned, leased or operated by the Borrowers or any of their Subsidiaries, (ii) any release of Hazardous Substances on such property or any part thereof in a quantity that is reportable under any applicable Environmental Law, and (iii) any pending or threatened proceeding for the termination, suspension or non-renewal of any permit required under any applicable Environmental Law, in each case of clauses (i), (ii) and (iii) above in which there is a reasonable likelihood of an adverse decision or determination that could reasonably be expected to result in a Material Adverse Effect, a certificate of an executive officer of the US Borrower, setting forth the details of such matter and the actions, if any, that such Obligor is required or proposes to take;
- (g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrowers or any of their Subsidiaries, or compliance with the terms of this Agreement, as the Administrative Agents or any Lender may reasonably request; and
- (h) within 90 days after the end of each fiscal year, a report in form and substance reasonably satisfactory to the Administrative Agent describing all material insurance coverage maintained by any of the Obligors or any of their respective Subsidiaries as of the date of such report.
  - Section 5.02 Notices of Material Events The US Borrower will furnish to the Administrative Agents and each Lender prompt written notice of the following:
  - (a) the occurrence of any Default and the action that the Obligors are taking or propose to take with respect thereto;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against any Obligor that could reasonably be expected to result in a Material Adverse Effect or that in any manner questions the validity of the Loan Documents;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; and
  - (d) any other development that results in, or could reasonably be expected to result in a Material Adverse Effect.

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Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the US Borrower setting forth the details of the event or development requiring such notice and any action, if any, taken or proposed to be taken with respect thereto.

- Section 5.03 <u>Existence</u>; Conduct of <u>Business</u> Each Borrower will, and will cause each of its respective Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business except to the extent failure to maintain or preserve could not reasonably be expected to result in a Material Adverse Effect; <u>provided</u> that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under <u>Section 6.04</u>.
- Section 5.04 Payment of Obligations Each Borrower will, and will cause each of its respective Subsidiaries to, pay when due its material obligations, including liabilities for Taxes, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) it has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.
- Section 5.05 Maintenance of Properties; Insurance Each Borrower will, and will cause each of its respective Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.
  - Section 5.06 Books and Records: Inspection Rights Each Borrower will, and will cause each of its respective Subsidiaries to, keep proper books of record and

account in which in all material respects full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Borrower will, and will cause each of its respective Subsidiaries to, permit any representatives designated by the Administrative Agents, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (provided a representative of the US Borrower shall have the right to be present), all at such reasonable times and as often as reasonably requested; provided, that following the Effective Date and so long as no Event of Default has occurred and is continuing, the US Borrower shall only be required to reimburse the Administrative Agents in accordance with Section 10.03 for the cost of one such inspection in any fiscal year.

Section 5.07 <u>Compliance with Laws</u> Each Borrower will, and will cause each of its respective Subsidiaries to, comply with all Laws (including Environmental Laws) and Orders applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.08 <u>Use of Proceeds and Letters of Credit</u> Each Borrower covenants and agrees that the proceeds of the Loans it receives will be used only to (i) finance the Acquisition;

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(ii) to refinance existing indebtedness; (iii) to pay the fees, expenses and other transaction costs of the Transactions and the Acquisition; and (iv) to fund working capital needs and general corporate purposes of such Borrower and its Subsidiaries. Each Borrower covenants and agrees that no part of the proceeds of any Loan it receives will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Letters of Credit and Euro Letters of Credit will be issued only to support the working capital needs and general corporate obligations of the such Borrower and its Subsidiaries relating to their respective lines of business as currently conducted.

Section 5.09 <u>Additional Guarantees and Security Documents</u> If any additional Wholly Owned Subsidiary of the US Borrower is formed or acquired after the Effective Date, the US Borrower will promptly notify the Administrative Agents thereof and

- (a) if such Subsidiary is a Domestic Subsidiary, within 30 days after such Subsidiary is formed or acquired, the US Borrower shall cause (i) any such Domestic Subsidiary the assets of which are all or substantially all comprised of stock or securities in one or more Foreign Subsidiaries to execute a Joinder Agreement for purposes of such Subsidiary becoming a US Guarantor under Section 9.01(a)(i) hereunder and a party to the relevant Security Documents, which Security Documents secure the Obligations of the Euro Borrower and deliver to the Administrative Agent such other documents relating thereto as the Administrative Agent shall reasonably request, (ii) any such Domestic Subsidiary the assets of which are not all or substantially all comprised of stock or securities in one or more Foreign Subsidiaries to execute a Joinder Agreement for purposes of such Subsidiary becoming a US Guarantor under Section 9.01(a)(ii) hereunder and a party to the relevant Security Documents, which Security Documents secure the Obligations of the US Borrower and deliver to the Administrative Agent such other documents relating thereto as the Administrative Agent shall reasonably request, (iii) the Equity Interests issued by any such Subsidiary described in clause (a)(i) above representing 65% of the total combined voting power (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) of all of the Equity Interests in such Subsidiary to be pledged to secure the Obligations of the US Borrower and the Obligations of the Euro Borrower pursuant to the relevant Security Documents; to the Pledged to secure the Obligations of the US Borrower and the Obligations of the Euro Borrower pursuant to the relevant Security Documents;
- (b) if such Subsidiary is a Foreign Subsidiary that is owned by a Domestic Subsidiary or by the US Borrower, within 30 days after such Subsidiary is formed or acquired, the US Borrower shall cause (i) such Subsidiary to execute a Joinder Agreement for purposes of such Subsidiary becoming a Euro Guarantor hereunder and deliver to the Euro Administrative Agent such other documents relating thereto as the Euro Administrative Agent shall reasonably request and (ii) the Equity Interests issued by such Subsidiary representing 65% of the total combined voting power (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) of all of the Equity Interests in such Subsidiary to be pledged to secure the Obligations of the US Borrower pursuant to the relevant Security Documents; and
- (c) if such Subsidiary is a Foreign Subsidiary owned by a Foreign Subsidiary or by the Euro Borrower or any of its Subsidiaries, within 30 days after such Subsidiary is formed or

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acquired, the Euro Borrower shall cause (i) such Subsidiary to execute a Joinder Agreement for purposes of such Subsidiary becoming a Euro Guarantor hereunder and deliver to the Euro Administrative Agent such other documents relating thereto as the Euro Administrative Agent shall reasonably request and (ii) all of the Equity Interests issued by such Subsidiary to be pledged to secure the Obligations of the Euro Borrower pursuant to the relevant Security Documents.

- (d) The intent of the Parties under this Agreement is that no Foreign Subsidiary of the US Borrower, or Domestic Subsidiary all or substantially all of the assets of which consist of stock or securities in one or more Foreign Subsidiaries, shall be treated as a pledgor or guarantor with respect to the Loan to any Obligation of the US Borrower for purposes of Code Section 956(d) and Treasury Regulation Section 1.956-2(c), and that the provisions of this Agreement shall be interpreted in a manner consistent with that intent.
- Section 5.10 Compliance with ERISA In addition to and without limiting the generality of Section 5.07, to the extent applicable, each Borrower shall, and shall cause each of its respective Subsidiaries to, (a) comply in all material respects with all applicable provisions of ERISA and the regulations and published interpretations thereunder with respect to all employee benefit plans (as defined in ERISA), (b) not take any action or fail to take action the result of which could be (i) a liability to the PBGC (other than liability for PBGC premiums) or (ii) a past due liability to any Multiemployer Plan, (c) not participate in any prohibited transaction that could result in any material civil penalty under ERISA or any tax under the Code, (d) operate each employee benefit plan in such a manner that will not incur any material tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code, in each case of clauses (a), (b), (c) and (d) above, except to the extent such failure to comply, such not taking such action, such failure to take such action, such not participating or such operating would not reasonably be expected to result in a Material Adverse Effect and (e) furnish to the Administrative Agent upon the Administrative Agent.
- Section 5.11 Compliance with Environmental Laws; Environmental Reports (a) Each Borrower shall, and shall cause each of its respective Subsidiaries to, (i) comply, and use best efforts to cause all lessees and other persons occupying real property owned, operated or leased by any of them to comply, in all material respects with all Environmental Laws applicable to its operations and real property; (ii) obtain and renew all material Governmental Approvals required under Environmental Laws applicable to its operations and real property; and conduct any Response in accordance with Environmental Laws; provided that no Borrower or any of its respective Subsidiaries shall be required to undertake any Response to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.
- (b) If a Default caused by reason of a breach of Section 3.12 or Section 5.11(a) shall have occurred and be continuing for more than 10 days without such Borrower or its Subsidiaries commencing activities reasonably likely to cure such Default, at the written request of the Required Lenders through the Administrative Agent, the US Borrower shall provide to the Lenders within 30 days after such request, at the expense of the US Borrower, an

environmental assessment report regarding the matters that are the subject of such Default, including where appropriate, any soil and/or groundwater sampling, prepared by an environmental consulting firm and in the form and substance reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Response to address them.

- Section 5.12 <u>Maintain Business</u> Except as otherwise permitted hereunder, each Borrower shall, and shall cause each of its respective Subsidiaries to, continue to engage primarily in the business or businesses being conducted on the date of this Agreement and businesses reasonably related thereto and other reasonable expansions and extensions of such business or businesses.
- Section 5.13 Further Assurances and New Intellectual Property Each Obligor will, at its own cost and expense, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be reasonably necessary or as the Administrative Agents or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Loan Documents and the Transactions, including all such actions to establish, preserve, protect and perfect the estate, right, title and interest of the Lenders, or the Administrative Agents for the benefit of the Lenders, to the Collateral (including Collateral acquired after the date hereof). If any material trademark, copyright or patent is acquired by the US Borrower or any of its Domestic Subsidiaries which is a US guarantor pursuant to Section 9.01(a)(ii) after the Effective Date (other than trademarks, copyrights and patents constituting Collateral under the Security Documents that become subject to the Lien of the Security Documents upon acquisition thereof), the US Borrower shall promptly give notice to the Administrative Agent thereof, and, shall cause such assets to be subjected to a Lien securing the Obligations of the US Borrower and the Obligations of the Euro Borrower.
- Section 5.14 <u>Delivery of Title Policies</u> The US Borrower shall cause originals of the title policies described in <u>Section 4.01(r)</u> to be delivered to the Administrative Agent no later than thirty (30) days after the Closing Date.
- Section 5.15 Post Closing Joinder Within thirty (30) days of the Closing Date, the US Borrower and the Euro Borrower shall cause (i) DYNAenergetics Beteiligungs GmbH and DYNAenergetics GmbH & Co. KG to execute Joinder Agreements in accordance with Section 5.09(c) and shall provide evidence reasonably satisfactory to Administrative Agent that one hundred percent of the equity issued in both such entities has been registered in the name of DYNAenergetics Holding GmbH in the share registries of such entities and (ii) shall cause Nobelclad Europe S.A. and Nitro Metall AB to execute Joinder Agreements in accordance with Section 5.09(c).

#### ARTICLE VI

#### Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed:

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Section 6.01 <u>Indebtedness</u> No Borrower will, nor will permit any of its respective Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created hereunder or under any of the Loan Documents, including renewals, extensions, refinancings and replacements hereof or thereof;
- (b) Indebtedness set forth in <u>Schedule 6.01</u> and extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;
- (c) Indebtedness of any Obligor or any of its respective Subsidiaries incurred to finance the acquisition, construction or improvement of any assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; <u>provided</u> that the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed \$5,000,000 at any time outstanding;
  - (d) Indebtedness owed by any Obligor to any other Obligor and guarantees by any Obligor of the Indebtedness of any other Obligor;
- (e) Indebtedness owed by any Obligor to any of the Subsidiaries of the US Borrower that is not an Obligor and guarantees by any such Subsidiary of any Indebtedness of any Obligor; <u>provided</u> that such Indebtedness is, and subrogation or reimbursement rights in respect of such guarantees are, subordinated in right of payment to the Obligations of such Obligor under the Loan Documents on terms reasonably acceptable to the Administrative Agent;
- (f) Indebtedness owed by any Subsidiary of any Obligor to any Obligor and guarantees of any Obligor of the Indebtedness of any such Subsidiary; provided that the principal amount of such Indebtedness and guarantees together with the principal amount of Indebtedness owed to any Obligor pursuant to Section 6.01(h) in the aggregate shall be limited to \$10,000,000 at any time outstanding. Notwithstanding the foregoing, no additional such Indebtedness shall be incurred and no additional such guarantees shall be made during the continuance of an Event of Default;
- (g) Indebtedness owed by any Subsidiary of any Obligor that is not an Obligor to any other Subsidiary that is not an Obligor and guarantees by any such Subsidiary of the Indebtedness of any other Subsidiary that is not an Obligor;
- (h) Indebtedness of any Subsidiary of any Obligor to the holders (or their respective Affiliates) of the Equity Interests in such Subsidiary on a basis that is substantially proportionate to their Equity Interests (with any disproportionately large interest received by any Obligor or any of its respective Subsidiaries or any disproportionately small interest received by any Person other than such Obligor or any such Subsidiary, being ignored for this purpose); provided that the principal amount of such Indebtedness owed to any Obligor together with the principal amount of Indebtedness owed to any Obligor pursuant to Section 6.01(f) shall be limited to \$10,000,000 at any time outstanding. Notwithstanding the foregoing,

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no additional such Indebtedness shall be incurred during the continuance of an Event of Default;

- (i) Indebtedness arising in connection with any Swap Agreement permitted by Section 6.06;
- (j) Indebtedness in respect of deposits made by customers and held under forward purchasing arrangements entered into with customers in the ordinary course of business;
  - (k) Indebtedness in respect of performance, bid, surety, appeal or similar bonds or completion or performance guarantees provided in the ordinary course of

business;

- (l) Indebtedness in respect of workers' compensation claims or self-insurance obligations otherwise permitted hereunder, in each case incurred in the ordinary course of business:
  - (m) customary indemnification, reimbursement or similar obligations and warranties under leases and other contracts in the ordinary course of business;
- (n) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; <u>provided</u> that such Indebtedness is extinguished within two Business Days after incurrence:
  - (o) Indebtedness constituting Investments permitted by Section 6.05;
- (p) the obligations to pay the purchase price, the hold back obligations and the indemnification obligations under the documents and agreements entered into or being entered into in respect of the Acquisition; and
  - (q) unsecured Indebtedness in the aggregate amount not in excess of \$6,000,000 outstanding at any time.

Section 6.02 <u>Liens</u> No Borrower will, nor will permit any of its respective Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

- (a) Permitted Encumbrances;
- (b) Liens created by the Security Documents;
- (c) Liens to secure Swap Agreements with any of the Lenders or Affiliate thereof;
- (d) Liens on any property or asset of any Borrower or any of its respective Subsidiaries existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Liens shall not apply to any other property or asset of any Borrower or any of such Subsidiaries and (ii) such Liens shall secure only those obligations which it secures on the date hereof and

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extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof;

- (e) Liens on assets acquired, constructed or improved by any Borrower or any of its respective Subsidiaries; provided that (i) such Liens secure Indebtedness permitted by clause (c) of Section 6.01, (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such assets and (iv) such Liens shall not apply to any other property or assets of any Borrower or any of its respective other Subsidiaries;
- (f) Liens existing on any property or asset prior to the acquisition thereof by any Borrower or any of its respective Subsidiaries or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Liens are not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as applicable, (ii) such Liens shall not apply to any other property or assets of any Borrower or any of its respective other Subsidiaries, (iii) such Liens shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as applicable, and extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof and (iv) such Liens secure only Indebtedness permitted under Section 6.01(c);
- (g) Liens in respect of the funds, Equity Interests or other properties or assets held in escrow in connection with the Acquisition as provided in the escrow agreement entered into pursuant to the Acquisition Agreement;
- (h) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off, netting or similar rights and remedies as to deposit, securities and commodities accounts;
- (i) Liens of sellers of goods to the Borrower and any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or similar provisions of applicable law in the ordinary course of business solely in connection with the purchase of such goods;
- (j) Liens in favor of customs and revenue authorities arising by operation of law to secure payment of customs duties in connection with the importation of goods;
  - (k) Liens deemed to exist in connection with investments in repurchase agreements described under clause (d) of the definition of Permitted Investments;
  - (l) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code as in effect in the applicable state or District of Columbia;
- (m) Liens in favor of any Obligor securing Indebtedness permitted under Section 6.01(d) and Section 6.01(f); provided that any such Liens encumbering assets of an Obligor shall be subordinated in right of payment to the Obligations of such Obligor under the Loan Documents on terms reasonably acceptable to the Administrative Agent;

- (n) Liens arising out of conditional sale, title retention, consignment or similar arrangements, or by way of contract that secures Indebtedness under any agreement, for the sale of goods and services; and
- (o) Liens on Equity Interests consisting of preferred equity certificates of Dynamic Material Luxembourg 1 S.à r.l. and Dynamic Materials Luxembourg 2 S.à r.l., that (i) require a holder of common or ordinary shares of such issuers to hold such preferred equity certificates in a specified proportion, (ii) require a holder of such preferred equity certificates to hold common or ordinary shares of such issuers in a specified proportion, (iii) restrict transfers of such preferred equity certificates, common shares or ordinary shares of such issuers to transfers that result in compliance with the preceding clauses (i) and (ii) or (iv) permit such issuers to call or redeem such Equity Interests.
- Section 6.03 <u>Fundamental Changes</u> No Borrower will, and will permit any of its respective Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default

shall have occurred and be continuing and, if such transaction involves the US Borrower, the US Borrower shall survive such transaction:

- (a) any Subsidiary of the US Borrower may merge into or consolidate with another Subsidiary of the US Borrower and any Subsidiary of the US Borrower may merge into or consolidate with the US Borrower;
- (b) any Subsidiary of the US Borrower may merge into or consolidate with any other Person so long as such Subsidiary is the surviving entity of such merger or consolidation to the extent permitted under <u>Section 6.10</u>;
- (c) any Subsidiary of the US Borrower may liquidate or dissolve so long as an Obligor acquires all or substantially all of the assets of such Subsidiary in liquidation (or in the case such Subsidiary is not a Wholly Owned Subsidiary, such Obligor receives its *pro rata* share of such assets in liquidation); and
  - (d) any Obligor or any of its respective Subsidiaries may change its jurisdiction of organization subject to compliance with Section 6.11.

Section 6.04 <u>Asset Sales</u> No Borrower will, nor will permit any of its respective Subsidiaries to, make or permit any Disposition (whether in one or a related series of transactions) of any property or assets (other than cash and cash equivalents) or enter into any agreement to do so, except:

- (a) Dispositions of inventory in the ordinary course of business;
- (b) Dispositions of assets, properties or businesses to any Borrower or any of its respective Wholly Owned Subsidiaries;
- (c) Dispositions of equipment and other property which is obsolete, worn out or no longer used in or useful to such Person's business, all in the ordinary course of business;

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- (d) Dispositions occurring as the result of a Casualty Event, condemnation or expropriation;
- (e) any Disposition (excluding any Disposition consisting of any Equity Interest in any of the Subsidiaries of the US Borrower) if (i) the consideration therefor is not less than the fair market value of the related asset (as determined in good faith by the Financial Officer of the US Borrower) and (ii) after giving effect thereto, the aggregate fair market value of the assets as reasonably determined by the Borrower disposed of in all Dispositions would not exceed \$5,000,000 during any fiscal year and \$10,000,000 in the aggregate during the term hereof; provided that the consideration for any Disposition shall consist of at least 75% cash or cash equivalents payable at closing or notes, to the extent permitted under Section 6.05;
- (f) Dispositions by any Domestic Subsidiary of its assets to another Domestic Subsidiary that is a Wholly Owned Subsidiary, and Dispositions by any Subsidiary of the Euro Borrower of its assets to any other Subsidiary of the Euro Borrower that is a Wholly Owned Subsidiary;
- (g) Dispositions of delinquent accounts receivable in the ordinary course of business for purposes of collection only (and not for the purpose of any bulk sale or securitization transaction);
  - (h) the surrender of contractual rights or the settlement, release or surrender of any contract, tort or other litigation claims in the ordinary course of business;
- (i) the abandonment or Disposition of Intellectual Property or other proprietary rights that are, in the reasonable business judgment of the US Borrower, no longer practicable to maintain or useful in the conduct of the business of any Borrower or any of its respective Subsidiaries;
  - (j) Dispositions permitted by Section 6.03;
- (k) Dispositions of Indebtedness from the US Borrower to a Subsidiary thereof or from a Subsidiary of the US Borrower to the US Borrower or another Subsidiary thereof in exchange for, upon conversion for, or contribution in respect of, Equity Interests in such Subsidiary of the US Borrower in connection with the capitalization or recapitalization from time to time of any such Subsidiary;
  - (l) payment of Restricted Payment permitted by <u>Section 6.07</u>;
  - (m) Dispositions of Permitted Investments; and
  - (n) any agreement to do any of the foregoing matters described in clauses (a) through (m) of this Section.

Section 6.05 Investments No Borrower will, and will permit any of its Subsidiaries to, make or permit to exist any Investment in any other Person, except:

(a) Permitted Investments;

- (b) Investments listed on Schedule 6.05 and any extensions, renewals, replacements or refinancings thereof that do not increase the amount of such Investments;
- (c) Investments and guarantees constituting Indebtedness permitted by Section 6.01(d) and Section 6.01(e);
- (d) Investments permitted by <u>Section 6.03</u> or <u>Section 6.06</u>;
- (e) Business Acquisitions permitted by <u>Section 6.10</u>;
- (f) Investments by any Obligor in any Subsidiary of any Obligor; provided that such Investment in any such Subsidiary that is not an Obligor shall be limited to \$10,000,000, net of any cash returned on such Investments. Notwithstanding the foregoing, no additional such Investment in any such Subsidiary that is not an Obligor shall be made during the continuance of an Event of Default;
  - (g) Investments by any Obligor in any other Obligor;
- (h) Investments received in satisfaction of judgments, settlements of accounts, debts or compromises of obligations or as consideration for the settlement, release or surrender of a contract, tort or other litigation claims, in each case in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

- (i) prepaid expenses and advances in the ordinary course of business, and lease, utility, workers' compensation, performance and other similar deposits in the ordinary course of business;
- (j) deposits of cash with banks or other financial institutions in the ordinary course of business so long as any such deposits by the US Borrower and any Domestic Subsidiary are subject to perfected Liens in favor of the Administrative Agent;
- (k) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the granting of trade credit in the ordinary course of business;
  - (l) Investments by any Subsidiary that is not a Obligor in, to, or for the benefit of any Subsidiary that is not an Obligor; and
  - (m) Investments received as consideration from any Disposition permitted by Section 6.04.
  - (n) Other Investments not otherwise permitted by this <u>Section 6.05</u> in aggregate amounts not in excess of \$1,000,000 at any time outstanding.

Section 6.06 Swap Agreements No Borrower will, nor will permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate raw material and supply cost risks or other risks to which any Borrower or any of its respective Subsidiaries has actual exposure; (b) Swap Agreements entered into in order to

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effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or Investment of any Borrower or any of its respective Subsidiaries; and (c) Swap Agreements to hedge foreign exchange rate risks to which any Borrower or any of its respective Subsidiaries has actual exposure. No Swap Agreement may be secured by a Lien except as permitted by Section 6.02(c).

Section 6.07 <u>Restricted Payments</u> No Borrower will, nor will permit any of its respective Subsidiaries to, declare or make, or agree to pay or make, any Restricted Payment, except:

- (a) Restricted Payments by any Subsidiary of the US Borrower ratably with respect to the Equity Interests in such Subsidiary;
- (b) Restricted Payments to any Obligor;
- (c) to purchase, retire, cancel or otherwise acquire any of the Equity Interests of the US Borrower being deposited in escrow in connection with the Acquisition pursuant to the escrow agreement entered into pursuant to the Acquisition Agreement;
- (d) Restricted Payments by the US Borrower pursuant to and in accordance with any stock option plans or other benefit plans for management (including non-employee directors) or employees of the US Borrower or any of its Subsidiaries in an aggregate amount during any fiscal year not to exceed \$5,000,000; and
- (e) Restricted Payments during any fiscal year that do not exceed the lesser of (i) \$5,000,000 or (ii) fifty percent (50%) of Net Income minus payments made from Excess Cash Flow pursuant to Section 2.10(b) of the US Borrower for the immediately prior fiscal year; provided that for purposes of this clause (d) no Event of Default exists or is created thereby.
- Section 6.08 Transactions with Affiliates No Borrower will, and will not permit any of its respective Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with any of its Affiliates, except:
- (a) at prices and on terms and conditions not less favorable to such Borrower or such Subsidiary, as applicable, than could be obtained on an arm's-length basis from unrelated third parties;
  - (b) any transaction between or among any of the Obligors;
- (c) transactions between or among any Subsidiary of the US Borrower that is not an Obligor and one or more other Subsidiaries of the US Borrower that are not Obligors;
  - (d) Indebtedness permitted by clauses (d) and (e) of <u>Section 6.01</u>;
  - (e) transactions permitted by <u>Section 6.03</u>;

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- (f) any transaction permitted by clauses (a) through (n) of Section 6.04;
- (g) Investments permitted by Section 6.05;
- (h) any Restricted Payment permitted by Section 6.07;
- (i) the payment of reasonable fees, expenses and compensations to officers, directors, managers, employees and consultants of any Borrower or any of its respective Subsidiaries and customary indemnification and insurance arrangements in favor of any such officer, director, manager, employee or consultant, and any agreement related to any of the foregoing entered into in the ordinary course of business; and
- (j) any agreements in existence on the Effective Date, as set forth on Schedule 6.08(j), as such agreements may be renewed, replaced or otherwise modified after the Closing Date upon terms which taken as a whole are not less favorable to the US Borrower and its Subsidiaries than the original terms of such agreements.
- Section 6.09 Restrictive Agreements No Borrower will, and will permit any of its respective Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Borrower or any of its respective Subsidiaries to create, incur or permit to exist any Lien upon any of its or their property or assets, or (b) the ability of any Obligor to pay dividends or other distributions with respect to any shares of its capital stock (to the extent the holder of such shares is another Obligor) or to make or repay loans or advances to such Borrower or any Guarantor or to guarantee Indebtedness of such Borrower or any Guarantor; provided that (i) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.09 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of any Subsidiary of the US Borrower pending such sale, provided such restrictions and conditions apply only to the Subsidiary of the US

Borrower that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof and (vi) clause (a) of the foregoing shall not apply to the provisions of the escrow agreement entered into pursuant to the Acquisition Agreement.

Section 6.10 <u>Business Acquisitions</u> Except as otherwise permitted by <u>Section 6.05</u>, no Borrower will, nor will permit any of its respective Subsidiaries to, make any Business Acquisitions; <u>provided</u> that each Borrower and any of its respective Subsidiaries may make Business Acquisitions<u>provided</u> that (a) the sum of the aggregate cash consideration paid therefor (excluding any amounts financed with new equity) shall not exceed \$10,000,000 or the equivalent in such other currency used in connection with such Business Acquisition, and the total consideration paid therefor (excluding any amounts financed with the new equity) shall not

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exceed \$25,000,000 or the equivalent in such other currency used in connection with such Business Acquisition in the aggregate during any trailing four quarter period; (b) the Leverage Ratio calculated on a pro forma basis for the most recently ended trailing four-quarter period for which financial statements are required to be delivered pursuant to Section 5.01(b) giving effect to any such Business Acquisition as if such Business Acquisition were consummated at the commencement of such four-quarter period shall not be greater than the maximum permitted Leverage Ratio as set forth in Section 6.16 at such time minus 0.25; (c) the acquired business or assets are in the same or similar line of business as any Borrower or any of its respective Subsidiaries; (d) for any Business Acquisition with total consideration in excess of \$50,000,000 or the equivalent in such other currency used in connection with such Business Acquisition, Borrower shall have received the written approval of the Administrative Agent having received the written approval of the Required Lenders, which approval shall not be unreasonably withheld and, in connection therewith, the Borrower shall have given the Administrative Agent and the Lenders at least ten (10) Business Days prior written notice of any such proposed Business Acquisition (each of such notices, a "Permitted Acquisition Notice"), which notice must be timely provided and must be accompanied by all of the information required in this Section 6.10 and shall (i) contain the estimated date such proposed Business Acquisition is scheduled to be consummated, (ii) attach a true and correct copy of the draft purchase agreement (if available), letter of intent, description of material terms or similar agreements executed by the parties thereto in connection with such proposed Business Acquisition, (iii) contain the estimated aggregate purchase price of such proposed Business Acquisition and the estimated amount of related costs and expenses and the intended method of financing thereof, and (iv) contain the estimated amount of Loans required to effect such proposed Business Acquisition; (e) no Default shall exist before or immediately after giving effect to such Business Acquisition; (f) prior to the consummation of the proposed Business Acquisition with a total consideration paid therefor in excess of \$10,000,000 or the equivalent in such other currency used in connection with such Business Acquisition the US Borrower shall furnish the Administrative Agents and the Lenders an officer's certificate executed by a Financial Officer of the US Borrower, certifying as to compliance with the requirements of the applicable preceding Section 6.10(a) through Section 6.10 (e), containing the calculations required in this Section 6.10; and (g) the consummation of each Business Acquisition shall be deemed to be a representation and warranty by the US Borrower that all conditions thereto under this Section 6.10 have been satisfied and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder.

Section 6.11 <u>Constituent Documents</u> No Obligor will amend its charter or by-laws or other constitutive documents in any manner which could adversely and materially affect the rights of the Lenders under this Agreement or their ability to enforce the same; <u>provided</u>, however, any Obligor shall be permitted after the date hereof to amend its constitutive documents for the purpose of changing its jurisdiction of organization so long as the Administrative Agent is given 30 days' prior written notice of such change.

Section 6.12 <u>Sales and Leasebacks</u> No Borrower shall, nor shall permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, that (i) any Borrower or any of its respective Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than any Borrower or any of its

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respective Subsidiaries) or (ii) any Borrower or any of its respective Subsidiaries intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by such Borrower or such Subsidiary to any Person (other than any other Borrower or any of other Subsidiaries of such Borrower) in connection with such lease; except for any such arrangement whereby any such sale or transfer of any assets that is made for cash consideration in an amount not less than the cost of such asset and is consummated within 180 days after such Borrower or such Subsidiary acquires or completes construction of such asset.

Section 6.13 <u>Capital Expenditures</u> No Borrower will, nor will permit any of its Subsidiaries to, make Capital Expenditures in the aggregate (including any Capital Lease Obligations) in any fiscal year which result in all Capital Expenditures made during such fiscal year by the US Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP to exceed: (i) for the year ended December 31, 2008, \$10,000,000 and (ii) thereafter, \$8,000,000, in each case, plus, beginning in the fiscal year ended December 31, 2009, the unused amount of such cap during the immediately prior year (but only for such immediately prior year and not any earlier periods).

Section 6.14 Changes in Fiscal Year The US Borrower shall not change the end of its fiscal year to a date other than December 31.

Section 6.15 Fixed Charge Coverage Ratio The US Borrower shall not permit the Fixed Charge Coverage Ratio (i) from January 1, 2008 through December 31, 2008, measured quarterly as of the last day of each fiscal quarter, to be less than 1.35 to 1.0 and (ii) thereafter, for any trailing four quarter period measured as of the last day of any fiscal quarter, to be less than 1.50 to 1.0.

Section 6.16 <u>Leverage Ratio</u> The Borrowers shall not permit the Leverage Ratio for any trailing four-quarter period measured as of the last day of each fiscal quarter to exceed (i) 2.0 to 1.0 for the period from the Effective Date through December 31, 2008, (ii) 1.50 to 1.0 for the period from January 1, 2009 through December 31, 2009, (iii) 1.25 to 1.0 for the period from January 1, 2010 through December 31, 2010 and (iv) 1.0 to 1.0 thereafter.

# ARTICLE VII

# **Events of Default and Remedies**

Section 7.01 <u>Events of Default</u> If any of the following events ("<u>Events of Default</u>") shall occur:

- (a) the US Borrower shall fail to pay any principal of any Term Loan or Revolving Loan or any reimbursement obligation in respect of any LC Disbursements, or the Euro Borrower shall fail to pay any principal of any Eurocurrency Loan, in each case when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the US Borrower shall fail to pay any interest on any Term Loan or Revolving Loan or any fee or other amount (other than an amount referred to in clause (a) of this Section

7.01) payable under this Agreement or the other Loan Documents in respect of any Term Loan or Revolving Loan or the Euro Borrower shall fail to pay any interest on any Eurocurrency Loan or any fee or other amount (other than an amount referred to in clause (a) of this Section 7.01) payable under this Agreement or the other Loan Documents in respect of any Eurocurrency Loan, in each case when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

- (c) any representation or warranty made or deemed made by or on behalf of any Borrower or any of its respective Subsidiaries in or in connection with this Agreement or any Loan Document or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement, or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect when made or deemed made;
- (d) any Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, Section 5.03 (with respect to the US Borrower's existence) or Section 5.08 or in Article VI (other than those referenced in (e) and (f), below);
- (e) any Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this <u>Article VII</u>) or in any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice of such failure from Administrative Agent to the US Borrower;
- (f) any Borrower or any of their Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;
- (g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (in each case, after giving effect to any applicable grace or notice period) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;
- (h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Borrower or any of its Subsidiaries or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any of its Subsidiaries or for a substantial part of its assets (individually, or in the aggregate), and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;
- (i) any Borrower or any of its Subsidiaries, shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in

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effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any of its Subsidiaries or for a substantial part of their (individually, or in the aggregate) assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

- (j) any Borrower or any Subsidiary shall become unable, admit in writing its inability, or fail generally to pay its debts as they become due;
- (k) one or more judgments for the payment of money that is not covered by insurance in an aggregate amount in excess of \$2,000,000 shall be rendered against any Borrower or any of its respective Subsidiaries or any combination thereof and the same shall remain undischarged or unstayed for a period of 60 consecutive days during which execution shall not be effectively stayed, or any attachment or levy shall be entered upon any assets of such Borrower or Subsidiary to enforce any such judgment;
- (l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;
- (m) a proceeding shall be commenced by any Obligor seeking to establish the invalidity or unenforceability of any Loan Document (exclusive of questions of interpretation thereof), or any Obligor shall repudiate or deny that it has any liability or obligation for the payment of principal or interest or other obligations purported to be created under any Loan Document;
- (n) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and (to the extent required by the Security Documents) perfected Lien on any material portion of the Collateral purported to be subject thereto, securing the obligations purported to be secured thereby, with the priority required by the Loan Documents, or any Obligor shall so assert in writing, in each case (i) other than as a result of action or inaction of the Administrative Agents or any Lender, including the expiration of an UCC financing statements or other instruments necessary to perfect the Administrative Agent's Lien in the Collateral or (ii) as a result of any Disposition of any Collateral permitted under the applicable Loan Documents or as otherwise permitted thereunder; or
  - (o) a Change in Control occurs;

then, and in every such event (other than an event with respect to either Borrower described in clause (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the US Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and

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payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each of them; and in case of any event described in clause (h) or (i) of this Section 7.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest notice of acceleration or the intent to accelerate or any other notice of any kind, all of which are hereby waived by each of them, and (iii) exercise any or all of the remedies available to it under any of the Loan Documents, at Law or in equity (including, without limitation, conducting a foreclosure sale of any of the Collateral).

# ARTICLE VIII

#### The Administrative Agent

Each of the Lenders and the Issuing Lender hereby irrevocably appoints the Administrative Agent and the Euro Administrative Agent as its agents and authorizes the Administrative Agent and the Euro Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agents by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

The Lender serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any of its Affiliates thereof as if it were not the Administrative Agent hereunder.

The Administrative Agents shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agents shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Administrative Agents shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agents required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02), and (c) except as expressly set forth herein, the Administrative Agents shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Subsidiaries that is communicated to or obtained by the Administrative Agents or any of their Affiliates in any capacity. The Administrative Agents shall not be liable for any action taken or not taken by them with the consent or at the request of the Required Lenders (or such other number or

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percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agents shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agents by the Borrowers or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuinnenss of this Agreement or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agents.

The Administrative Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agents also may rely upon any statement made to them orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agents may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agents may perform any and all their duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agents. The Administrative Agents and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agents and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agents.

In addition, each of the Lenders, the Issuing Lender and the Euro Issuing Lender hereby indemnifies the Agents (to the extent not reimbursed by the Borrowers), ratably according to its respective pro rata share of the total of the Commitments, or if no Commitments are outstanding, the respective pro rata share of the total of the Commitments immediately prior to the time Commitments ceased to be outstanding held by each of them, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agents (or either of them) in any way relating to or arising out of this Agreement or any action taken or omitted by the Administrative Agents under this Agreement or the other Loan Documents (including any action taken or omitted under <a href="Article II">Article II</a> of this Agreement). Without limitation of the foregoing, each Lender, the Issuing Lender agrees to reimburse each of the Administrative Agents promptly upon demand for its respective pro rata share of the total of the Commitments of any out-of-pocket expenses (including reasonable counsel fees) incurred by the Administrative Agents (or either of them) in connection with the preparation, execution, administration or

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enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement or the other Loan Documents to the extent that such Administrative Agent is not reimbursed for such expenses by the Borrower. The provisions of this section shall survive the termination of this Agreement and the payment of the Obligations.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, either of the Administrative Agents may resign at any time by notifying the Lenders, the Issuing Lender, the Euro Issuing Lender and the US Borrower. Upon any such resignation, the Required Lenders shall have the right, with the approval of US Borrower, which shall not be unreasonably withheld, conditioned or delayed, and shall not be required during the existence of an Event of Default, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

Euro Guarantor to pay punctually any such amount, each such US Guarantor shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Agreement or the other Loan Documents.

- (ii) Each US Guarantor the assets of which are <u>not</u> all or substantially all comprised of stock or securities in one or more Foreign Subsidiaries hereby jointly, severally, unconditionally and irrevocably with every other such US Guarantor guarantees the full and punctual payment (whether at stated maturity, upon acceleration or otherwise) of the principal of and interest on the Revolving Credit Loans, the Term Loans, the Euro Revolving Loans and the Euro Term Loans, and the full and punctual payment of all other Obligations payable by the US Borrower, the Euro Borrower, any Euro Guarantor or any other US Guarantor under the Loan Documents. Upon failure by the US Borrower, the Euro Borrower, any Euro Guarantor to pay punctually any such amount, each such US Guarantor shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Agreement or the other Loan Documents.
- (iii) The Guarantee contained in clauses (i) and (ii) of this paragraph is a guaranty of payment and not of collection. The Lenders shall not be required to exhaust any right or remedy or take any action against the US Borrower, the Euro Borrower, the Euro Guarantors, the US Guarantors or any other Person or any Collateral. Each US Guarantor agrees that, as between such US Guarantor and the Lenders, the Obligations of the US Borrower, the Euro Borrower, the Euro Guarantors and the other US Guarantors may be declared to be due and payable for the purposes of this Guarantee notwithstanding any stay, injunction or other prohibition which may prevent, delay or vitiate any declaration as regards the US Borrower or the Euro Borrower and that in the event of a declaration or attempted declaration, the Obligations of the US Borrower, the Euro Borrower, the Euro Guarantors and the other US Guarantors shall immediately become due and payable by each US Guarantor for the purposes of this Guarantee.
- (b) Each Euro Guarantor hereby jointly, severally, unconditionally and irrevocably guarantees the full and punctual payment (whether at stated maturity, upon acceleration or otherwise) of the principal of and interest on the Eurocurrency Loans, and the full and punctual payment of all other Obligations payable by the Euro Borrower or any other Euro Guarantor under the Loan Documents. Upon failure by the Euro Borrower or any other Euro Guarantor to pay punctually any such amount, each Euro Guarantor shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Agreement or the other Loan Documents. This Guarantee is a guaranty of payment and not of collection. The Lenders shall not be required to exhaust any right or remedy or take any action against the Borrowers, the Guarantors, or any other Person or any Collateral. The Euro Guarantors agree that, as between the Euro Guarantors and the Lenders, the Obligations of the Euro Borrower and the other Euro Guarantors may be declared to be due and payable for the purposes of this Guarantee notwithstanding any stay, injunction or other prohibition which may prevent, delay or vitiate any declaration as regards the Euro Borrower and that in the event of a declaration or attempted declaration, the Obligations of the Euro Borrower and the other Euro Guarantors shall immediately become due and payable by each Euro Guarantor for the purposes of this Guarantee.

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- (c) The US Borrower hereby unconditionally and irrevocably guarantees the full and punctual payment (whether at stated maturity, upon acceleration or otherwise) of the principal of and interest on the Eurocurrency Loans, and the full and punctual payment of all other Obligations payable by the Euro Borrower or any Euro Guarantor under the Loan Documents. Upon failure by the Euro Borrower or any Euro Guarantor to pay punctually any such amount, the US Borrower shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Agreement or the other Loan Documents. This Guarantee is a guaranty of payment and not of collection. The Lenders shall not be required to exhaust any right or remedy or take any action against the Euro Borrower, the Guarantors, or any other Person or any Collateral. The US Borrower agrees that, as between the US Borrower and the Lenders, the Obligations of the Euro Borrower and the Euro Guarantors may be declared to be due and payable for the purposes of this Guarantee notwithstanding any stay, injunction or other prohibition which may prevent, delay or vitiate any declaration as regards the Euro Borrower and that in the event of a declaration or attempted declaration, the Obligations of the Euro Borrower and the Euro Guarantors shall immediately become due and payable by the US Borrower for the purposes of this Guarantee.
- Section 9.02 <u>Guarantee Unconditional</u> The obligations of each of the Guarantors and the US Borrower under this <u>Article IX</u> shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:
- (a) any extension, renewal, settlement, compromise, waiver or release in respect of any Obligation of either of the Borrowers or any other Guarantor under the Loan Documents, by operation of law or otherwise;
  - (b) any modification, amendment or waiver of or supplement to the Loan Documents;
- (c) any release, impairment, non-perfection or invalidity of any direct or indirect security for any obligation of either of the Borrowers or any other Guarantor under the Loan Documents;
- (d) any change in the corporate existence, structure or ownership of the either of the Borrowers or any other Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting either of the Borrowers, any other Guarantor or their respective assets or any resulting release or discharge of any obligation of either of the Borrowers or any other Guarantor contained in the Loan Documents;
- (e) the existence of any claim, set-off or other rights which the Guarantor may have at any time against either of the Borrowers, any other Guarantor, any of the Administrative Agents, any Lender or any other Person, whether in connection herewith or any unrelated transactions, <u>provided</u> that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;
- (f) any invalidity or unenforceability relating to or against either of the Borrowers or any other Guarantor for any reason of the Loan Documents, or any provision of applicable law or regulation purporting to prohibit the payment by either of the Borrowers or any other

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Guarantor of the principal of or interest on any Loan or any other amount payable by either of the Borrowers or any other Guarantor under the Loan Documents; or

(g) any other act or omission or delay of any kind by either of the Borrowers, any other Guarantor, the Administrative Agents, any Lender or any other Person or any other circumstance whatsoever that might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

expenses on, or in connection with, any Obligations from and after the Petition Date (as hereinafter defined) as a result of the provisions of the federal bankruptcy law or otherwise, Obligations for which the Guarantors shall be obligated shall include interest accruing on the Obligations at the Default Rate from and after the date on which such Borrower files for protection under the federal bankruptcy laws or from and after the date on which an involuntary proceeding is filed against such Borrower under the federal bankruptcy laws (herein collectively referred to as the "Petition Date") and all reasonable attorneys' fees and expenses incurred by the Administrative Agent and the Lenders from and after the Petition Date in connection with the Obligations.

Section 9.03 <u>Discharge Only upon Payment in Full; Reinstatement In Certain Circumstances</u> The obligations of each of the Guarantors and the US Borrower under this <u>Article IX</u> shall remain in full force and effect until the Commitments shall have terminated and the principal of and interest on the Loans and all other amounts payable by the Obligors under the Loan Documents shall have been paid in full. If at any time any payment of the principal of or interest on any Loan or any other amount payable by the Obligors under the Loan Documents is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of any Obligor or otherwise, the obligations of each of the Guarantors and the US Borrower under this <u>Article IX</u> with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time. The US Guarantors under <u>Section 9.01(a)(i)</u> jointly and severally agree to indemnify each Euro Revolving Credit Lender and each Euro Term Lender, the US Guarantors under <u>Section 9.01(a)(ii)</u> jointly and severally agree to indemnify each Revolving Credit Lender and each Euro Guarantors jointly and severally agree to indemnify each Revolving Credit Lender and each Euro Term Lender on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the bad faith or willful misconduct of such Lender.

Section 9.04 <u>Waiver by Each Guarantor</u> Each Guarantor irrevocably waives acceptance hereof, diligence, presentment, demand, protest notice of acceleration or the intent to accelerate and any other notice not provided for in this <u>Article IX</u>, as well as any requirement that at any time any action be taken by any Person against the Borrowers or any other Guarantor or any other Person.

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Section 9.05 Subrogation Each US Guarantor under Section 9.01(a)(ii) shall be subrogated to all rights of the Revolving Credit Lenders and the Term Lenders, the Administrative Agent and the holders of the Revolving Credit Loans and the Term Loans against the US Borrower in respect of any amounts paid by such US Guarantor pursuant to the provisions of this Article IX, and each of the US Guarantors under Section 9.01(a)(i), the Euro Guarantors and the US Borrower shall be subrogated to all rights of the Euro Revolving Credit Lenders and the Euro Term Lenders, the Euro Administrative Agent and the holders of the Euro Revolving Loans and the Euro Term Loans against the Euro Borrower; provided that such Guarantor or the US Borrower, as applicable, shall not be entitled to enforce or to receive any payments arising out of or based upon such right of subrogation until the principal of and interest on the Loans and all other sums at any time payable by the Borrowers under the Loan Documents shall have been paid in full. If any amount is paid to any Guarantor or the US Borrower, as applicable, on account of subrogation rights under these Guarantees at any time when all the Obligations have not been indefeasibly paid in full, the amount shall be held in trust for the benefit of the Revolving Credit Lenders, the Term Lenders, the Euro Revolving Credit Lenders or the Euro Term Lenders, as applicable, and shall be promptly paid to the Administrative Agents to be credited and applied to the Obligations, whether matured or unmatured or absolute or contingent, in accordance with the terms of this Agreement.

Section 9.06 <u>Stay of Acceleration</u> (a) If acceleration of the time for payment of any amount payable by any Obligor under the Loan Documents is stayed upon insolvency, bankruptcy or reorganization of the US Borrower, all such amounts otherwise subject to acceleration under the terms of this Agreement shall nonetheless be payable by each US Guarantor under <u>Section 9.01(a)(ii)</u> for its respective Obligations as described in this <u>Article IX</u> promptly following demand by either of the Administrative Agent made at the request of the requisite proportion of the Lenders specified in <u>Article X</u> of this Agreement.

(b) If acceleration of the time for payment of any amount payable by any Obligor under the Loan Documents is stayed upon insolvency, bankruptcy or reorganization of the Euro Borrower, all such amounts otherwise subject to acceleration under the terms of this Agreement shall nonetheless be payable by each US Guarantor under Section 9.01(a)(i), each Euro Guarantor and the US Borrower hereunder for its respective Obligations as described in this Article IX promptly following demand by either of the Euro Administrative Agent made at the request of the requisite proportion of the Lenders specified in Article X of this Agreement.

Section 9.07 <u>Limit of Liability</u> Notwithstanding any other provision of this <u>Article IX</u>, the obligations of each of the Guarantors and the US Borrower under this <u>Article IX</u> shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of any applicable state law.

Section 9.08 Release upon Sale Upon any sale of any Guarantor permitted by this Agreement, and, if required hereunder, payment to the Administrative Agents, as applicable, for the pro rata benefit of the applicable Lenders, of the proceeds of such sale, such Guarantor shall (a) be released from its obligations as a Guarantor hereunder, (b) all Liens, if any, securing such Guarantee shall automatically be terminated and released and (c) the Administrative Agent will, at the expense of said Guarantor, execute and deliver such documents as are reasonably

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necessary to evidence said releases and terminations, following written request from the applicable Borrower and receipt by the Administrative Agents of a certificate from the applicable Borrower certifying no Default or Event of Default exists.

Section 9.09 Benefit to Guarantor Each Guarantor acknowledges that the Loans made to the Borrowers may be, in part, re-loaned to, or used for the benefit of, such Guarantor and its Affiliates, that each Guarantor, because of the utilization of the proceeds of the Loans, will receive a direct benefit from the Loans and that, without the Loans, such Guarantor would not be able to continue its operations and carry on its business as presently conducted.

Section 9.10 <u>Jurisdiction Specific Provisions</u> The provisions of this <u>Article IX</u> are subject to the limitations contained in the jurisdiction specific provisions contained in Schedule 9.10 attached hereto.

## ARTICLE X

# Miscellaneous

Section 10.01 Notices (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the US Borrower or the Euro Borrower, to:

5405 Spine Road Boulder, Colorado 80301 Attention: Chief Financial Officer Telecopy No.: (303) 604-1897 Telephone No.: (303) 655-5700

with a copy to:

Holme Roberts & Owen LLP 1700 Lincoln Street, Suite 4100 Denver, Colorado 80203 Attention: Paul G. Thompson Telecopy No.: (303) 866-0200 Telephone No.: (303) 861-7000

(ii) if to a Guarantor, to it in care of the US Borrower;

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## (iii) if to the Administrative Agent to

JP Morgan Loan Services JPMorgan Chase Bank, N.A. Loan and Agency Service Group 10 South Dearborn, 7th Floor Chicago, Illinois 60603 Telecopy No.: (312) 385-7102 Telephone No.: (312) 732-2009

with a copy to:

JPMorgan Chase Bank, N.A. 1125 17<sup>th</sup> Street, Suite 300 Denver, Colorado 80202 Attention: Brennon J. Crist Telecopy No.: (303) 244-3351 Telephone No.: (303) 244-3220

Andrews Kurth LLP 600 Travis, Suite 4200 Houston, Texas 77002 Attention: Thomas J. Perich Telecopy No.: 713-220-4285 Telephone No.: 713-220-4268

(iv) If to the Euro Administrative Agent:

J.P. Morgan Europe Limited 125 London Wall London England EC2Y 5AJ Telecopy No: 44 207 777 2360 Telephone No.: 44 207 777 2352/2355

Attn: Agency

Attn: Agency

 $(v) \hspace{1cm} \text{if to the Issuing Lender, to} \\$ 

JP Morgan Loan Services JPMorgan Chase Bank, N.A. Loan and Agency Service Group 10 South Dearborn, 7th Floor Chicago, Illinois 60603 Telecopy No.: (312) 385-7102 Telephone No.: (312) 732-2009

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with a copy to:

JPMorgan Chase Bank, N.A. 1125 17<sup>th</sup> Street, Suite 300 Denver, Colorado 80202 Attention: Brennon J. Crist Telecopy No.: (303) 244-3351 Telephone No.: (303) 244-3220

(vi) if to the Swingline Lender, to

JP Morgan Loan Services JPMorgan Chase Bank, N.A. Loan and Agency Service Group 10 South Dearborn, 7th Floor Chicago, Illinois 60603 Telecopy No.: (312) 385-7102 Telephone No.: (312) 732-2009

with a copy to:

JPMorgan Chase Bank, N.A. 1125 17<sup>th</sup> Street, Suite 300 Denver, Colorado 80202 Attention: Brennon J. Crist Telecopy No.: (303) 244-3351 Telephone No.: (303) 244-3220

(vii) if to the Euro Issuing Lender to:

J. P. Morgan Europe Limited 125 London Wall London EC2Y 5AJ England

Telecopy No.: (44) 207 777 2360 Telephone No.: (44) 207 777 2352/2355

Attn: Agency Department

with a copy to:

Global Trade Solutions 1 Chaseside (DB01-0365) Bournemouth, BH 7 7DA Attn: Fiona Hallam

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Telecopy No.: (44) 1202 343730 Telephone No.: (44) 1202 347744

(viii) if to the Euro Swingline Lender to:

J. P. Morgan Europe Limited 125 London Wall London EC2Y 5AJ England

Telecopy No.: (44) 207 777 2360 Telephone No.: (44) 207 777 2352/2355

Attn: Agency Department

- (ix) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.
- (b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent or the Euro Administrative Agent, as applicable; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent or the Euro Administrative Agent, as applicable, and the applicable Lender. Each of the Administrative Agents or the Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.
- (c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 10.02 Waivers; Amendments (a) No failure or delay by the Administrative Agent, the Euro Administrative Agent, the Issuing Lender, the Euro Issuing Lender or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Euro Administrative Agent, the Issuing Lender, the Euro Issuing Lender and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Obligor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the

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foregoing, the making of a Loan or issuance of a Letter of Credit or Euro Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Euro Administrative Agent, any Lender, the Issuing Lender or the Euro Issuing Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan, or LC Disbursement or the Euro LC Disbursement or reduce the rate of interest thereon (including any agreement to amend or modify the definition of Leverage Ratio that would have the effect of reducing such rate of interest), or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan, LC Disbursement or Euro LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.18(b) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any

of the provisions of this Section 10.02 (b) or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) release all or substantially all of the Collateral from the Liens of the Security Documents, without the written consent of each Lender, provided, that nothing herein shall prohibit the Administrative Agents from releasing any Collateral, or require the consent of the other Lenders for such release, in respect of items sold, leased, conveyed or otherwise disposed to the extent such sale, lease, conveyance or other disposition is permitted or not prohibited hereunder, or (vii) release all or substantially all of the Guarantees (other than in connection with any transaction permitted or not prohibited hereunder), without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Euro Administrative Agent, the Issuing Lender or the Swingline Lender hereunder without the prior written consent of the Administrative Agents, the Issuing Lender or the Swingline Lender, as applicable.

Section 10.03 Expenses; Indemnity; Damage Waiver (a) The US Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (other than the Euro Administrative Agent, any Euro Revolving Credit Lender, any Euro Term Lender, the Euro Issuing Lender or the Euro Swingline Lender), including the reasonable fees, charges and disbursements of counsel and consultants for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, due diligence undertaken by the Administrative Agent with respect to the financing contemplated by this Agreement, the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket

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expenses incurred by the Administrative Agent, the Issuing Lender, any Revolving Credit Lender, Term Lender, including the fees, charges and disbursements of one primary law firm as counsel, local counsel as needed and consultants for the Administrative Agent, the Issuing Lender or any Revolving Credit Lender or Term Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Revolving Credit Loans and Term Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred by the Euro Administrative Agent and its Affiliates (other than the Administrative Agent, the Arranger, the Issuing Lender or any Revolving Credit Lender, Term Lender or Swingline Lender), including the reasonable fees, charges and disbursements of counsel and consultants for the Euro Administrative Agent, in connection with the syndication of the credit facilities provided for herein, due diligence undertaken by the Euro Administrative Agent with respect to the financing contemplated by this Agreement, the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (y) all reasonable out-of-pocket expenses incurred by the Euro Issuing Lender in connection with the issuance, amendment, renewal or extension of any Euro Letter of Credit or any demand for payment therefor and (z) all reasonable out-of-pocket expenses incurred by the Euro Administrative Agent, the Euro Issuing Lender, any Euro Revolving Credit Lender or any Euro Term Lender, including the fees, charges and disbursements of one primary law firm as counsel, local counsel as needed and consultants for the Euro Administrative Agent, the Euro Issuing Lender, the Euro Revolving Credit Lender or he Euro Term Lenders, in coluding its rights under this Section, or in connection with the Euro Revolving

(b) (i) The US Borrower shall indemnify the Administrative Agent, the Issuing Lender and each Revolving Credit Lender and Term Lender, and each Related Party (other than the Euro Administrative Agent, any Euro Revolving Credit Lender or any Euro Term Lender) of any of the foregoing Persons (each such Person being called an "US Indemnitee") against, and hold each US Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any US Indemnitee, incurred by or asserted against any US Indemnitee arising out of, in connection with, or as a result of (A) the execution or delivery of this Agreement, any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (B) any Loan made or Letter of Credit issued by any Revolving Credit Lender or Term Lender or the Issuing Lender, as applicable, or the use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (C) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the US Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the US Borrower or any of its Subsidiaries, or (D) any actual claim, litigation, investigation or

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proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any US Indemnitee is a party thereto; and whether or not caused by the ordinary, sole or contributory negligence of any Indemnitee, provided further that such indemnity shall not, as to any US Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence or willful misconduct of such US Indemnitee. It is agreed by the parties hereto that the indemnity obligations of the US Borrower under the Commitment Letter are superseded to the extent described in this Agreement.

- (ii) The Euro Borrower shall indemnify the Euro Administrative Agent, the Euro Issuing Lender, each Euro Revolving Credit Lender and each Euro Term Lender and each Related Party (other than the Administrative Agent, the Arranger, the Issuing Lender or any Revolving Credit Lender, Term Lender or Swingline Lender) of any of the foregoing Persons (each such Person being called an "Euro Indemnitee") against, and hold each Euro Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Euro Indemnitee, incurred by or asserted against any Euro Indemnitee arising out of, in connection with, or as a result of (A) the execution or delivery of this Agreement, any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (B) any Loan made or Euro Letter of Credit issued by any Euro Revolving Credit Lender or any Euro Term Lender or the Euro Issuing Lender or the use of the proceeds therefrom (including any refusal by the Euro Issuing Lender to honor a demand for payment under a Euro Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Euro Letter of Credit), (C) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Euro Borrower or any of its Subsidiaries, or (D) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Euro Indemnitee is a party thereto; and whether or not caused by the ordinary, sole or contributory negligence of any Indemnitee, provided further that such indemnity shall misconduct of such Euro Indemnitee.
- (c) (i) To the extent that the US Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Issuing Lender or the Swingline Lender under paragraph (a) or (b) of this Section, each Revolving Credit Lender and Term Lender severally agrees to pay to the Administrative Agent, the Issuing Lender or the Swingline Lender, as applicable, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as applicable, was incurred by or asserted against the Administrative Agent, the Issuing Lender or the Swingline Lender in its capacity as such. For purposes hereof, a Revolving Credit Lender's or a Term Lender's "pro rata share" shall be determined based upon its share of the sum of the total Revolving Credit Exposure, outstanding Term Loans, and unused Commitments at the time.

- (ii) To the extent that the Euro Borrower fails to pay any amount required to be paid by it to the Euro Administrative Agent, the Euro Issuing Lender or the Euro Swingline Lender under paragraph (a) or (b) of this Section, each Euro Revolving Credit Lender and Euro Term Lender severally agrees to pay to the Euro Administrative Agent, the Euro Issuing Lender or the Euro Swingline Lender, as applicable, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as applicable, was incurred by or asserted against the Euro Administrative Agent, the Euro Issuing Lender or the Euro Swingline Lender in its capacity as such. For purposes hereof, a Euro Revolving Credit Lender's or a Euro Term Lender's "pro rata share" shall be determined based upon its share of the sum of the total Euro Revolving Credit Exposure, outstanding Euro Term Loans, and unused Commitments at the time.
- (d) To the extent permitted by applicable Law, each Obligor shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan, Letter of Credit or Euro Letter of Credit or the use of the proceeds thereof.
  - (e) All amounts due under this Section shall be payable no later than ten (10) Business Days from demand therefor.
- Section 10.04 Successors and Assigns (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Lender or the Euro Issuing Lender that issues any Letter of Credit or Euro Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by such Borrower without such consent shall be null and void), except pursuant to a merger in accordance with Section 6.03; (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section; and (iii) no Eurocurrency Lender may assign or otherwise transfer its rights or obligations hereunder to any natural person. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Lender or the Euro Issuing Lender that issues any Letter of Credit or Euro Letter of Credit), Indemnitees, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agents, the Issuing Lender, the Euro Issuing Lender and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) (i) Subject to the conditions set forth in paragraph (b)(ii) of this Section, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

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- (A) the US Borrower, <u>provided</u> that no consent of the US Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, or an Approved Fund or, if any Event of Default has occurred and is continuing, any other assignee; and
- (B) the Administrative Agent, the Issuing Lender and the Swingline Lender, <u>provided</u> that no such consent shall be required for an assignment of (x) any Revolving Loan Commitment to an assignment to an assignment that is a Lender with a Revolving Loan Commitment immediately prior to giving effect to such assignment (y) any Euro Revolving Loan Commitment to an assignment to an assignment or (z) all or any portion of a Term Loan or a Euro Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund;
  - (ii) Assignments shall be subject to the following additional conditions:
- (A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (or  $\varepsilon$ 5,000,000 in the case of a Eurocurrency Loan) and after giving affect to such assignment, the assigning Lender Commitment or Loans shall not be less than \$5,000,000 (or  $\varepsilon$ 5,000,000 in the case of a Eurocurrency Loan) unless each of the US Borrower and the Administrative Agent otherwise consent, provided that no such consent of the US Borrower shall be required if an Event of Default under clause (a), (b), (h) or (i) of Section 7.01 has occurred and is continuing;
- (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;
- (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which fee shall not be payable by or due or owing from any Obligor);
- (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrowers, the Guarantors and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws; and
- (E) no assignment shall be made that results in an increase to the Mandatory Cost or increased liability of any Obligor unde<u>Section 2.15</u> or <u>Section 2.17</u>.

Section 10.04 (b) (ii) (C) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans.

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For the purposes of this <u>Section 10.04(b)</u>, "<u>Approved Fund</u>" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is owned, administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

- (iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.15, Section 2.16, Section 2.17 and Section 10.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.
  - (iv) Each of the Administrative Agent, acting for this purpose as an agent of the US Borrower, and the Euro Administrative Agent, acting for this purpose as an

agent of the Euro Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans, LC Disbursements and Euro LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agents, the Issuing Lender and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each Borrower, each of the Administrative Agents, the Issuing Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

- (v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register and, with respect to the assignment of any Euro Term Loan or any Euro Revolving Loan, shall notify the Euro Administrative Agent thereof. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.
- (c) (i) Any Lender may, without the consent of the Borrowers, the Administrative Agents, the Issuing Lender, the Euro Issuing Lender, the Euro Swingline Lender or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a

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portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agents, the Issuing Lender, the Euro Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, each Participant shall be entitled to the benefits and subject to the limitations of Section 2.15, Section 2.16, and Section 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender.

- (ii) A Participant shall not be entitled to receive any greater payment under Section 2.15, Section 2.16, or Section 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the US Borrower's prior written consent (which consent expressly acknowledges any additional obligations of the Borrowers in respect of Indemnified Taxes or Other Taxes). A Participant shall not be entitled to the benefits of Section 2.17 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.17(e) as though it were a Lender.
- (d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
- Section 10.05 Survival All covenants, agreements, representations and warranties made by any of the Borrowers and Guarantors herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit and Euro Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Lender, the Euro Issuing Lender or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit or Euro Letter

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Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, Section 2.16, Section 2.17 and Section 10.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit, the Euro Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 10.06 Counterparts; Integration; Effectiveness This Agreement may be executed in counterparts and may be delivered in original or facsimile form (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.07 Severability Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08 Right of Setoff (a) Each Revolving Credit Lender, Term Lender, and Swingline Lender and the Issuing Lender and each of its Affiliates (other than any Euro Revolving Credit Lender, any Euro Term Lender, the Euro Administrative Agent, the Euro Issuing Lender or the Euro Swingline Lender) is hereby authorized at any time that an Event of Default shall have occurred and is continuing and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the US Borrower or any US Guarantor under Section 9.01(a)(ii) against any and all of the obligations of the US Borrower and each such US Guarantor now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each such Lender under paragraph (a) of this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

(b) Each Eurocurrency Lender and each of its Affiliates (other than the Administrative Agent, the Arranger, the Issuing Lender or any Revolving Credit Lender, Term Lender or Swingline Lender) is hereby authorized at any time that an Event of Default shall have occurred and is continuing and from time to time, to the fullest extent permitted by law, to

set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Euro Borrower or any Euro Guarantor against any and all of the obligations of the Euro Borrower and each Euro Guarantor now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each such Lender under paragraph (b) of this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

(c) Notwithstanding the foregoing, JPMorgan Chase Bank, National Association, London Branch, in its capacity as escrow agent under the escrow agreement entered into pursuant to the Acquisition Agreement shall have no right to set off and apply any deposits and other obligations at any time owing by it to or for the credit or account of any Obligor under such escrow agreement against any of the obligations of such Obligor hereunder.

### Section 10.09 Governing Law; Jurisdiction; Consent to Service of Process

- (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.
- (b) EACH OF THE BORROWERS AND GUARANTORS HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENTS, THE ISSUING LENDER OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST THE ANY OF THE BORROWERS OR GUARANTORS OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.
- (c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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- (d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.
- Section 10.10 <u>WAIVER OF JURY TRIAL</u> EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.
- Section 10.11 <u>Headings</u> Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.
- Section 10.12 Confidentiality. Each of the Administrative Agents, the Issuing Lender, the Euro Issuing Lender and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that in the case of Information required to be disclosed by a Person pursuant to a subpoena or similar legal process, such Person shall use reasonable efforts to provide the US Borrower with prior notice of such required disclosure and the opportunity to obtain a protective order in respect thereof if no conflict exists with such Peron's governmental, regulatory or legal requirements), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations under the Loan Documents, (g) with the consent of the US Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agents, the Issuing Lender or any Lender on a nonconfidential basis from a source other

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disclosure by such Borrower or such Subsidiary, as applicable; <u>provided</u> that, in the case of information received from such Borrower or such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(a) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 10.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE US BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND

#### APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

EURO GUARANTOR:

- (b) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY ANY BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWERS AND GUARANTORS AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENTS THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.
- (c) Notwithstanding the provisions of Section 10.12(a), or any other provision of this Agreement or any Loan Document, each of the Administrative Agents, the Issuing Lender, the Euro Issuing Lender, the Lenders and the Obligors may disclose to any and all Persons general information that is relevant in order to understand the tax treatment and tax structure of the transactions contemplated by this Agreement or any Loan Document. For the avoidance of doubt, the preceding sentence does not allow for the disclosure of any specific information that is not otherwise discloseable by reason of Section 10.12(a) and that is not relevant to understanding the tax treatment and tax structure of the transactions contemplated by this Agreement, such as (i) the specific identity of the Borrowers or any of its current or future Affiliates or (ii) any specific pricing terms or any other specific nonpublic business or financial information. For purposes of this Section 10.12(c), the terms "tax treatment" and "tax structure" shall have the meaning provided by Treasury Regulation Section 1.6011-4.
- Section 10.13 <u>Interest Rate Limitation</u> Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or reimbursement obligation, together with all fees, charges and other amounts that are treated as interest on such Loan or reimbursement obligation under applicable law (collectively the "Charges"), shall exceed the maximum lawful

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rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or reimbursement obligation in accordance with applicable law, the rate of interest payable in respect of such Loan or reimbursement obligation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or reimbursement obligation but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans, reimbursement obligations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount shall have been received by such Lender.

Section 10.14 <u>USA Patriot Act</u> Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "<u>Act</u>"), hereby notifies the Borrowers that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the names and addresses of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the Act.

Section 10.15 <u>Joint and Several Liability; Limitation.</u> Except as otherwise expressly provided herein, the Obligations of the Obligors hereunder and under the Loan Documents for payment obligations with respect to the Loans shall be several and not joint. Notwithstanding anything to the contrary herein or under any Loan Documents, no Foreign Subsidiary or Domestic Subsidiary the assets of which are all or substantially all comprised of stock or securities in one or more Foreign Subsidiaries shall have any liability whatsoever in respect of any Obligations of the US Borrower or any Domestic Subsidiary.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

US BORROWER:	DYNAMIC MATERIALS CORPORATION, a Delaware corporation	
	Ву	: /s/ Richard A. Santa
	Name:	Richard A. Santa
	Title:	Chief Financia Officer
EURO BORROWER:	DYNAMIC MATERIALS LUXEMBOURG 2 S. R.L.	
	By : /s/ Richard A. Name:	Santa Richard A.
	Title:	Santa Chief Financia Officer
EURO GUARANTOR:	DYNAMIC MATERIALS LUXEMBOURG 1 S. R.L.	
	By:/s/Richard A. Santa	
	Name:	Richard A. Santa
	Title:	Chief Financia Officer

## HOLDING GMBH)

	By :/s/ Christian Becker		
	Name: Title:		Christian Becker Managing Director
ADMINISTRATIVE AGENT, ISSUING BANK, SWINGLINE	JPMORGAN CHASE BANK, N.A.		
LENDER AND LENDER:	By : /s/ Brennon J. Crist		
	Name:		Brennon J. Crist
	Title:		Vice President
EURO ADMINISTRATIVE AGENT,			J.P. MORGAN
EURO ISSUING BANK, EURO			EUROPE LIMITED
SWINGLINE LENDER AND LENDER:	By:/s/Kathryn Jepson		
	Name: Title:		Kathryn Jepson Vice President
SOLE BOOKRUNNER, AND LEAD ARRANGER:	JPMORGAN SECURITIES INC.		
AND LEAD ARRANGER.	By :/s/ Keith Winzenried		
	Name: Title:		Keith Winzenried Executive Director
LENDER:	BANK OF AMERICA, N.A.		
	By : /s/ David R. Barney Name:		David R.
	Title:		Barney Senior Vice President
LENDER:	BANK OF THE WEST		
	By : /s/ Mark Francis Name:		Mark Francis
	Title:		Senior Portfolio Manager
LENDER:	KEY BANK NATIONAL ASSOCIATION	N .	
	By :/s/ Michelle Bushey Name:		Michelle
	Title:		Bushey Senior Vice President
LENDER:	U.S. BANK, N.A.		
	By Name:	: /s/ Gregory J. Blanchard	C
	Title:		Gregory J. Blanchard Vice President
LENDER:	VECTRA BANK COLORADO,		
	NATIONAL ASSOCIATION		

By : /s/ Bradley D. Elliot Name: Title:

Bradley D. Elliot Assistant Vice President LENDER:

# WELLS FARGO BANK, NATIONAL ASSOCIATION

By : /s/ Kenneth D. Brown Name: Kenneth D. Brown Vice President Title:

#### [JPMORGAN CHASE LETTERHEAD]

November 16, 2007

#### Dynamic Materials Corporation

Credit Agreement dated November 16, 2007, by and among Dynamic Materials Corporation, ("US Borrower"), Dynamic Materials Luxembourg 2 S.à r.l., ("Euro Borrower") and together with US Borrower, the "Borrowers"), the Guarantors listed therein, the Lenders listed therein, JPMorgan Chase Bank, N.A., as Administrative Agent for the Revolving Credit Lenders and the Term Lenders ("US Agent"), J.P. Morgan Europe Limited, as Administrative Agent for the Euro Revolving Credit Lenders and the Euro Term Lenders ("Euro Agent") and JPMorgan Securities Inc., as Sole Bookrunner and Lead Arranger (the 'Credit Agreement").

### Ladies and Gentlemen:

Capitalized terms used herein and not otherwise defined shall have the meanings given in the Credit Agreement. The US Agent is willing to postpone completion of certain of the closing conditions required under the Credit Agreement listed on Exhibit A attached to this letter (the "Post Closing Conditions") on the following terms and

By execution and delivery of this letter, Borrowers represent, warrant, covenant and agree with the US Agent that the Post Closing Conditions (in form and substance satisfactory to the US Agent in its sole discretion) will be satisfied within the respective periods of time set forth on Exhibit A attached hereto. Borrowers further agree that upon their failure or refusal to satisfy any of the Post Closing Conditions within said respective time periods, the Lenders shall have no obligation to make Advances under the Commitments (, and such failure or refusal shall constitute an Event of Default under the Credit Agreement, and the US Agent and Euro Agent will be entitled to exercise their remedies under the Credit Agreement with respect thereto.

This document will be governed by the laws of the State of New York.

Signature	Page	Fol	lowel
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[Signature Page Follows]			
		Sincerely,	
		JPMORGAN CHASE BANK, N.A.	
		By:/s/ Brennon J. Crist	
AGREEI	D		
DYNAM	IIC MATERIALS CORPORATION		
Ву:	/s/ Richard A. Santa		
Name: Title:	Richard A. Santa Chief Financial Officer		
DYNAM	IIC MATERIALS LUXEMBOURG 2 S.À R.L.		
Ву:	/s/ Yvon Cariou		
Name: Title:	Yvon Cariou Chief Executive Officer		
		[Signature Page to Post Closing Agreement]	

# EXHIBIT A

UNDELIVERED ITEM	DELIVERY TIME-FRAME	
US Borrower shall deliver an executed Open-End Leasehold Mortgage,     Assignment of Leases and Rents, Security Agreement and Fixture Filing for the     Dunbar Mine Facility, Ohio Pyle Road, Rural Road 2, Fayette County in the     Commonwealth of Pennsylvania.	60 Days	
2) US Borrower shall deliver a Pro Forma Mortgagee's Title Policy showing no liens, with the exception of Permitted Liens, and indicating US Borrower is the owner of the leasehold estate in the Dunbar Mine Facility (more particularly described in 1).	60 Days	
3) US Borrower shall deliver an executed Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing for the property located at 1138 Industrial Park Drive, Mt. Braddock, Fayette County in the Commonwealth of Pennsylvania.	60 Days	
4) US Borrower shall deliver a Pro Forma Mortgagee's Title Policy showing no liens, with the exception of Permitted Liens, and indicating US Borrower is fee owner for the property at 1138 Industrial Park Drive (more particularly described in 3).	60 Days	

5) US Borrower shall deliver a legal opinion from local Pennsylvania counsel as to enforceability and other matters reasonably required by US Agent covering the leasehold mortgage and fee mortgage described in items 1 and 3 above.

60 Days

UNDELIVERED ITEM

DELIVERY TIME-FRAME

6) US Borrower shall deliver the German share pledge documents evidencing pledges of all of the Equity Interests in Blitz F07-dreihundert-vierzehn GmbH (in the future: DYNAenergetics Holding GmbH), fully executed in the form agreed.

No later than Noon, Eastern Standard Time on November 16, 2007

[The side-by-side German language version of this agreement has been omitted.]

#### **Managing Director's Agreement**

between

DYNAenergetics Beteiligungs-GmbH

Kaiserstraße 1, 53839 Troisdorf

- hereinafter referred to as the "Company" -

represented by the its advisory board

and

Rolf Rospek

Plotenweg 3, 31234 Edemissen

- hereinafter also referred to as "Managing Director" -

#### Preamble

By its resolution of July 23, 2001, the shareholders' meeting appointed Mr. Rolf Rospek as Managing Director Geschäftsführer) of the Company.

In this capacity, the Managing Director also conducted management activities on behalf of DYNAenergetics GmbH & Co KG (hereinafter **DYNA KG"**) which also acted as contractual party of the Managing Director's Agreement as of September 7, 2001 (hereinafter "**Director's Agreement**") concluded with the Managing Director.

On November 15, 2007, the Company became an indirect, wholly-owned subsidiary of

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Dynamic Materials Corporation, a Delaware, USA, corporation (hereinafter "DMC").

The Director's Agreement was terminated by means of the agreement attached as **Exhibit 1** to this Agreement and shall now be mutually replaced in its entirety by this Agreement and the following terms and conditions:

# Section 1 Duties and Responsibilities

- 1. The Managing Director shall perform his tasks with the diligence of a prudent businessman in compliance with applicable law, the provisions of the Articles of Association of the Company in their currently valid version, this Agreement, any by-laws applying to the management in their currently valid version and the instructions of the general shareholders. His tasks may be changed from time to time by a shareholder's resolution.
- 2. The duties of the Managing Director consist of the management of the business of the Company. This includes all activities required with regard to the integration process of the Company into the DMC Group.
- 3. The Company shall be jointly represented by two managing directors or one managing director jointly with a holder of procura (Prokurist). By shareholder's resolution one of several Managing Directors can be entitled to represent the Company acting alone and a Managing Director can be exempted from the restrictions contained in Section 181 of the German Civil Code. However, if only one Managing Directors has been appointed, this Managing Director shall represent the Company acting alone.
- 4. The Managing Director, upon demand by the Company, shall also act in single cases on behalf of other affiliated companies of the Company according to Sec. 15 of the German Stock Companies Act ("Aktiengesetz") (including other corporations of DMC). Such tasks will be deemed encompassed by the remuneration pursuant to Section 3.For the avoidance of doubt, during the term of this Agreement, the Managing Director shall act primarily on behalf of the Company and of DYNA KG and in its Companies' core businesses.

Parties agree that the place of office of the Managing Director will be the area of Hannover, Germany. Such place of office shall not be moved by the Company on a permanent basis without the Managing Director's consent. However, Parties agree that business trips within the country and abroad are part of the Managing Director's obligations under this Agreement. The duration and destination of such work/business trips are determined by the requirements in the individual case.

#### Section 3 Remuneration / Expenses

- 1. The Managing Director shall receive a fixed yearly remuneration at the amount of EUR 169,542.96 gross that will be paid in twelve equal installments to be paid on the final day of each month excluding the deductions as required by law. In the instance that the yearly remuneration pursuant to clause 1 is not subject to social insurance contributions, the Company shall pay to the Managing Director until the applicable assessment basis (Bemessungsgrundlage) an amount twice as much as the employer's contribution (Arbeitgeberanteil) fictitiously incurring with regard to this partial amount as to the contributions to annuity insurance, health insurance and nursing insurance.
- 2. All services rendered by the Managing Director under this Agreement, including any services performed outside of normal working hours and on weekends or holidays, and any services rendered to affiliates of the Company shall be deemed to have been compensated in full by the compensation provided in Section 3 paragraph 1.
- 3. The fixed yearly remuneration according to paragraph 1 shall be reduced or increased to the same percent ratio in which the remuneration of a commercial clerk (kaufmännischer Angestellter) of the highest wage group of the tariff group Chemistry is being adjusted. Assessment basis for such changes shall always be the last base salary according to paragraph 1. If the relevant collective labor agreement (Tarifvertrag) provides for changes in lump sums, the base salary shall be increased

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by the same amounts.

- 4. In addition, the Managing Director shall receive an additional success-related bonus per business year according to targets to be separately agreed by and between the Company and the Managing Director, at least in the amount of EUR 42,400.00. The bonus shall be reduced or increased to the same percent ration that the amount according to paragraph 3 is altered.
- 5. The Company shall also render payments to the existing company pension scheme on behalf of the Managing Director.

Subject to deviating provisions within the pension plan and upon the Managing Director's discretion, the Company shall take out a direct insurance (Directversicherung) on behalf of the Managing Director instead of such contributions under clause 1 to an annual premium at the amount of the maximum rates legally permissible.

In the instance that the amount of the maximum rates legally permissible for indirect insurances will be increased, the Managing Director can demand of the Company an increase of the direct insurance taken out according to clause 1 or that another direct insurance will be taken out with an insured sum in the amount of the one that was increased, each without an impact as to the fixed yearly renumeration according to paragraph 1.

The Managing Director shall be irrevocably named the beneficiary of the direct insurances.

If the Managing Director leaves the Company, he shall be entitled to take over and carry on all direct insurances taken out on his behalf at his own expense. The Company has no obligation to continue any payment for such direct insurances as from the termination of this Agreement.

6. The Company will also include the Managing Director into the company accident insurance that contains the following insurance benefits:

Euro 250.000,00 in case of death.

Euro 500.000,00 in case of invalidity,

and into a "D & O-insurance" having a coverage of at least EUR 7.5 Mio. And a validity for at least 5 years after termination of this agreement or removal as managing director.

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- 7. In accordance with Company's and DYNAenergetics GmbH & Co KG's written policies and applicable German tax regulations, Company shall reimburse the Managing Director for all appropriate expenses and outlays associated with his job. While taking the train, the Managing Director is entitled to travel first class; if he travels by plane, he may travel via Business Class.
- Company also pays to Managing Director the expenses incurring from an already existing private life-insurance with Allianz Lebensversicherungs-AG at the yearly amount of 56,169.00 gross.

Section 4 Benefits

The Company agrees to provide the Managing Director with a company car for business and private purposes.. The monthly leasing rates shall not exceed an amount of a maximum of EUR 1,020.00 net. All taxes incurring due to the use of the company car for private purposes shall be borne by the Managing Director on his own.

Section 5 Assignment

- 1. Any claims by the Managing Director against the Company for payment of salary, bonuses or other compensation, contribution, benefit, etc. may not be pledged or assigned without the previous written consent of the Company.
- 2. The assertion of any right of retention, right to refuse performance or set-off of claims with regard to any Company's claim shall be excluded as far as permitted by

#### Section 6 Vacation

1. The Managing Director shall be entitled to an annual vacation of 30 working days. Working days means all calendar days other than Saturdays, Sundays and legal holidays in Germany. If annual vacation was not fully taken by Managing Director

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prior to March 31 of the subsequent calendar year due to opposing Company interests, such vacation not taken shall lapse without the Managing Director being entitled to compensation in return.

The Managing Director shall coordinate the dates of his vacation with other Managing Directors (if any) on an appropriately timely basis. Any grounds for pressing business shall take priority.

#### Section 7 Unavailability and Continued Payment of Compensation in the Event of Illness

- 1. If the Managing Director cannot perform the duties arising out of this Agreement due to illness or otherwise being indisposed, he shall promptly inform the Company of the expected duration of his unavailability. The Managing Director shall also inform the Company of any business urgently in need of attention.
- 2. In the event of an inability to work due to illness, the Managing Director is required to submit a doctor's excuse prior to the expiration of the third calendar day following the commencement and expected duration of the inability to work. In the event of an illness extending beyond the period specified in the excuse, a subsequent excuse must be submitted within two days of the expiration of this period.
- 3. Other than in the event of being disabled to work (Berufs-/Erwerbsunfähigkeit), the Managing Director shall continue to receive the fixed salary provided under Section 3 paragraph 1 of this Agreement for the duration of his inability to work due to any illness for which he is not at fault for a period of up to a maximum of 6 months in each individual case. Any sickness allowances granted to Managing Director during this time shall be deducted from the remuneration payment.
- 4. The Managing Director hereby assigns to the Company all claims against third parties caused in connection with the reasons for his inability to work in an amount corresponding to the compensation of the Managing Director for the duration of his inability to work. The Managing Director is required to forward to the Company all information required to enforce these claims.
- 5. In the instance of the Managing Director's death occurring during the term of this Agreement, the fixed remuneration according to Section 3 paragraph 1 and the bonus according to Section 3 paragraph 4 shall be paid for three calendar months following the death of the Managing Director to his wife or to his children, provided

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they are still minors and received child support from the Managing at this time pro rata temporis. The surviving dependants shall not be entitled to receive any further payments from the Company due to the Managing Director's existing pension scheme during this time.

Upon expiry of the third full calendar month after the Managing Director's death, there is no further entitlement to the fixed remuneration according to Section 3 paragraph 1 and the bonus according to Section 3 paragraph 4.

#### Section 8 Ancillary activities

- 1. The Managing Director shall devote all of business time exclusively to the Company and its affiliates. He is required to make his best effort to support and promote the entire business of the Company.
- 2. The assumption of any ancillary activities, be they compensated or uncompensated, requires the previous written consent of the Company. The same shall also apply to the assumption of any honorary posts in private clubs, organizations or federations.
- 3. Publications and addresses given by the Managing Director also require the previous written consent of the Company if interests or the reputation of the Company are affected thereby.
- 4. The Company (represented by its shareholders) shall deny its consent only if there is reason to suspect that the proposed activity would interfere with legitimate interests of the Company or the fulfillment of the contractual duties of the Managing Director. This consent is revocable at any time, provided the revocation is not unreasonable.

1.	The Managing Director may not work, as an employee, independently on a free-lance basis or in any other way, for third parties that are direct or indirect competitors of
	the Company or DYNA KG, or third parties affiliated with such competitors, during the term and for a period of 2 years after termination of this Agreement.

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Furthermore, the Managing Director may not set up, buy or directly or indirectly hold shares in any such company for the time of the ban according to sentence 1. As to the scope of application of this non-competition clause pursuant to this Section 9 regarding contents and territory, the non-competition clause according to the Section 11 of the Purchase, Sale and Assignment Agreement concluded today between, among others, the Managing Director and Dynamic Materials Corporation shall apply*mutatis mutandis*. The acquisition of less than 5 % of the share capital in a publicly traded stock corporation acquired for investment purposes are excluded from this prohibition of competition. This non-competition clause also applies for the benefit of companies affiliated with the Company or DYNA KG. Further, this non-competition clause applies to the advantage of and against any legal successor of Company and DYNA KG.

- 2. During the term and for two years after the termination of this Agreement, the Managing Director is prohibited from soliciting or accepting work, if DYNA KG's area of operation is affected, from any customer of the Company or DYNA KG, which has been a customer of the Company within the two years prior to termination of this agreement or which was a prospective customer of the Company or DYNA KG within 12 months prior to the termination of this agreement. The solicitation ban also applies for the benefit of companies affiliated with the Company or DYNA KG according to Section 15 of the German Stock Companies Act (Aktiengesetz) (collectively also referred to as the "DYNA Group Companies") concerning the business activities of the Company, DYNA KG and their subsidiaries.
- 3. For the duration of the post-contractual prohibition of competition, the Company undertakes to pay the Managing Director, for each year of non-competition, compensation in the amount of one half of the fixed yearly remuneration according to Section 3 paragraph 1 last paid to Managing Director. Payment of the compensation is due in 12 monthly instalments at the end of the month.
- 4. Any income earned by the Managing Director, or any income he consciously refrains from earning, during the post-contractual prohibition of competition, either as a self-employed person, as an employed person, or through any other form of work, will be deducted from the compensation pursuant to paragraph 3 if the compensation, taken together with the income earned, would exceed the fixed yearly remuneration according to Section 3 paragraph 1 last received. Income also includes any unemployment benefits received by the Managing Director. The Managing Director is obliged to provide the company, upon its request, with information concerning the extent of his income.
- 5. The Company (represented by the shareholders) may notify the Managing Director

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in writing at any time during the term of this Agreement until the time when the termination notice is submitted by the Company or, in case of a termination of this Agreement by the Managing Director, within ten calendar days after receipt by the Company of the termination notice, that the non-compete or the non-solicitation obligation is waived. The post-contractual prohibition of competition does not come into effect if the employment relationship ends because the Managing Director retires, either early or definitively.

- 6. In every case of infringement of the non-competition obligation under paragraph 1 and/or the non-solicitation obligation under paragraph 2 by the Managing Director, the Managing Director shall pay a contractual penalty in the amount of EUR 100,000.00. In case of a long-term infringement such penalty shall be payable by the Managing Director for each calendar month during which infringement has occurred. Any claims for further damages shall not be affected hereby.
- 7. Parties agree that acting as a director of Dynamic Materials Corporation would not be deemed a breach of this Section 9.

#### Section 10 Solicitation of Employees

- 1. During the employment and for a period of two years after the termination of this agreement, the Managing Director is prohibited from soliciting or participating in the soliciting of employees of the DYNA Group Companies, encouraging of such employees to leave the employ with the respective DYNA Group Company and any hiring or other contracting with such employees outside of his duties for the respective DYNA Group Company for the benefit of third employers.
- 2. In every case of infringement of this non-solicitation obligation by the Managing Director, the Managing Director shall pay a contractual penalty in the amount of EUR 100,000.

### Section 11 Confidentiality / Return of Company Property

1. The Managing Director shall, during the period of employment with the Company

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and at any time thereafter, keep secret any confidential information concerning the business, contractual arrangements, transactions or specific affairs of the Company or its affiliates and he will not use any such information for his own benefit or for the benefit of others. Such confidential information specifically includes, but is not limited to, Company's (or its affiliates') intellectual property, clientele, price lists, pricing methods, names of employees, salary data, procedural/tactical approaches to areas of the business, strategic business decisions, and any other matters which may be considered confidential or proprietary to the Company.

In every case of infringement of this obligation of secrecy the Managing Director shall pay to the Company a contractual penalty in the amount of EUR 50,000.00. Any claims for further damages shall not be affected hereby.

- 3. During the term of this Agreement upon request and at the end of the term of this Agreement without request, the Managing Director shall return to the Company all Company property and any documentation in his possession which relates to the Company or to its affiliates, in particular all notes, memoranda, drawings, protocols, reports, files and other similar documentation (as well as copies or other reproductions thereof). Accordingly, the same applies to non-tangible information and material, for example computer programs or data stored on discs or the like.
- 4. The Managing Director recognizes that the documentation referred to above is the sole property of the Company or its affiliates. The Managing Director has no right of retention with respect thereto.

# Section 12 Copyrights and other Intellectual Property Rights

- 1. For all inventions of the managing director the "Employee inventions act" and the directives to that act in the relevant version apply.
- 2. The claims and rights of the managing director resulting from inventions during the former managing director's agreement remain in effect.

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#### Section 13 Duration

- 1. This Agreement is in effect as of 01. October 2007 and shall have a fixed term of 3 years.
- 2. After the expiry of the fixed term under paragraph 1 this Agreement stays valid without any term and can be terminated by either party in observance of a notice period of 6 months as of the end any calendar year (*ordentliche Kündigung*). The right of the parties to terminate this Agreement for important reasons (*aus wichtigem Grund*) without notice shall thereby remain unaffected. In particular, such important reasons for the Company exist, if the managing director breaches his contractual or his compulsory legal obligations. Any notice of termination must be in writing.
- 3. The Company is entitled to exempt the Managing Director during the term of the Agreement, while continuing to be paid the fixed salary under Section 3 paragraph 1 of this Agreement but offsetting the annual vacation, from continuing to engage in his activities for the Company, in particular in the event that his appointment as Managing Director is revoked or this Agreement is terminated.

#### Section 14 Time-barring

- 1. All claims by one party arising out of the Managing Director's Agreement or any associated with the Managing Director's Agreement, shall be time-barred if they are not asserted against the other party in writing within three months of falling due.
- 2. If the other party refuses to recognize the claim or does not speak out within 2 weeks of asserting the claim, it shall become time-barred if not asserted in court within three months of being refused or the expiration of the deadline.

#### Section 15 Miscellaneous

- 1. No oral agreements have been made. Any changes or supplements to this Agreement also in regard to this clause must be made in writing to be effective.
- 2. Should any of the provisions of this Agreement be or become invalid or impracticable

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in part or in full, this shall not affect the legal validity of the remaining provisions. In such a case, the invalid or impracticable provision shall be replaced by a valid and practicable provision corresponding economically as closely as possible to the purpose of the valid or impracticable provision. This shall also apply to any lacunae in this Agreement.

- 3. This Agreement is governed by German law. The location of the registered office of the Company shall be the exclusive place of jurisdiction for any disputes arising in connection with the implementation of this Agreement.
- 4. If not already provided for, any and all earlier service and/or employment contracts between the Managing Director and the Company, in particular the Director's Agreement shall be explicitly rescinded by mutual agreement on the signing of this Agreement. Besides, the Managing Director declares that he has repaid all loans, overpaid advances or comparable payments the Company or its affiliates had granted him until the date thereof and that he has also satisfied all other claims the Company or its subsidiaries had against him.
- 5. The Agreement is executed in both a German and an English version. In case of discrepancies or contradictions between the German and English versions, the German version shall prevail.
- 6. The contractual parties acknowledge having received a written copy of this Agreement.

	/s/ Rolf Rospek
	Rolf Rospek
	DYNAenergetics Beteiligungs-GmbH
	By: /s/ Rolf Rospek
	Rolf Rospek
	By: /s/ Patrick Xylander
	Patrick Xylander
	By: /s/ Uwe Gussel
	Uwe Gussel
	12
	Exhibit 1 to Managing Director's Agreement
A	Agreement
	v and among
DYNAenergetics GmbH & Co KG, Kaiserstraße 1, 53839 Troisdorf	
	- hereinafter referred to as "DYNA KG" -
	and
2. DYNAenergetics Beteiligungs-GmbH, Kaiserstraße 1, 53839 Troisdorf	
	- hereinafter referred to as "DYNA GmbH" -
	and
3. Rolf Rospek, Plotenweg 3, 31234 Edemissen	
	- hereinafter referred to as "Managing Director" -
- DYNA K	G, DYNA GmbH and Managing Director hereinafter also jointly referred to as the "Parties" -
1	Preamble
DYNA KG and Managing Director concluded a Managing Director's Agreement ( <b>Agreement"</b> ).	"Geschäftsführer-Vertrag") dated as of September 7, 2001 (hereinafter referred to as "MD
Shareholders of DYNA GmbH (as shareholder of DYNA KG) explicitly consented	to the conclusion of the MD Agreement in the MD Agreement.
On November 15, 2007, DYNA GmbH and DYNA KG became indirect, wholly-o (hereinafter " $\mathbf{DMC}$ ").	wned subsidiaries of Dynamic Materials Corporation, a Delaware, USA, corporation
With regard to this transaction, Parties desire to terminate the MD Agreement and	to fully replace it by a different managing director's agreement.
NOW THEREFORE, in consideration of their mutual obligations, the Parties agr	ee as follows:
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Termination	Sec. 1 of the MD Agreement
The Parties hereby agree that the MD Agreement is herebyconsensually terminated	and will be replaced by an agreement between DYNA GmbH and the Managing Director.
Fin	Sec. 2 al Provisions

1. Parties agree that by means of this Agreement all matters between the Parties and all claims against each other are finally settledIt is understood and agreed that this Agreement constitutes a full accord and satisfaction of any and all claims either Party may have had, or claimed to have had, against the other and/or its predecessors or affiliates, arising out of or relating to any prior agreements except for the claims on a bonus and on payment of VAT resulting from the MD Agreement as of 30 September 2007.

effectiveness of the other provisions of this Agreement shall remain unaffected. The invalid or unenforceable provision shall be replaced by such provision(s) which t Parties would have foresceably agreed upon had they had knowledge of the invalidity, unenforceability or the gap as of the time of the signing of this agreement. Should a provision be or prove to be invalid for the stipulated extent and scope of the respective obligation contained therein, the scope and extent of such obligation shall be adjusted to match the legally admissible extent and scope of obligation.		
Amendments or modifications to this agreement require w requirement.	vritten form to be effective. The same shall apply to a modification or abrogation of this written form	
This agreement shall be governed by the laws of the Federal Republic of Germany save for its conflict of laws provision and the Convention on the International Salo of Goods (CISG).		
, the	, the	
DYNAenergetics GmbH & Co KG	DYNAenergetics Beteiligungs-GmbH	
, the Rolf Rospek		
	Parties would have foreseeably agreed upon had they had Should a provision be or prove to be invalid for the stipula shall be adjusted to match the legally admissible extent an Amendments or modifications to this agreement require was requirement.  This agreement shall be governed by the laws of the Fede of Goods (CISG).  , the  DYNAenergetics GmbH & Co KG	



#### FOR IMMEDIATE RELEASE

November 16, 2007

CONTACT:

Pfeiffer High Investor Relations, Inc. Geoff High 303-393-7044

# DYNAMIC MATERIALS PURCHASES GERMAN EXPLOSION WELDING AND OIL-WELL PERFORATION COMPANY DYNAenergetics FOR \$96.6 MILLION IN CASH AND STOCK

Acquisition Expands DMC's Presence In Worldwide Explosion Welding Markets; Establishes New Business Segment in Growing Oil and Gas Industry

BOULDER, Colo. — Nov. 16, 2007 — Dynamic Materials Corporation (DMC) (Nasdaq: BOOM), the world's leading provider of explosion-welded plates, today announced it has purchased privately held DYNAenergetics, a Germany-based manufacturer of clad metal plates and various explosives-related oil-field products. The acquisition was valued at approximately \$96.6 million (Euro 65.9 million), exclusive of transaction costs, and was completed for \$83.4 million in cash (Euro 56.9 million) and 251,041 shares of DMC common stock. DMC also assumed approximately \$2.8 million (Euro 1.9 million) of DYNAenergetics net indebtedness.

DYNAenergetics recorded sales of approximately Euro 50 million (\$73.3 million) for its fiscal year ended September 30, 2007. The company operates two business units: DYNAPLAT and DYNAWELL.

DYNAPLAT has a 40-year history as one of Europe's leading explosion welding companies, and generates approximately 55% of DYNAenergetics' total revenue stream. The business operates manufacturing facilities in Germany and serves primarily a European and Asian base of industrial fabrication customers.

The DYNAWELL division utilizes both explosive and metalworking technologies to manufacture a wide range of proprietary and non-proprietary products for the global oil field production and decommissioning industries. Products manufactured by DYNAWELL include shaped charges, detonators and detonating cords, bi-directional boosters, and perforating guns for the perforation of oil and gas wells. DYNAWELL also distributes a line of seismic products that support oil and gas exploration activities.

Yvon Cariou, president and CEO of DMC, said, "DYNAenergetics is widely regarded as one of the world's top-tier explosion-welding businesses. Its addition to the DMC family enhances our ability to address growing worldwide demand for clad metal plates, brings new depth and talent to our management and operations teams, and expands our already leading position in the global explosion welding market. We also are very excited about the addition of DYNAWELL, which will augment our involvement in

specialized explosive manufacturing processes and immediately position us within the growing international oil and gas services industry."

Rolf Rospek, who has 27 years of industry experience and has served as chief executive of DYNAenergetics since 2001, said, "This is an exciting transaction for our company and its employees. This combination should also benefit our collective base of customers, who will gain access to expanded production capacity and the combined expertise of two of the world's leading explosion-welding businesses. Among other benefits, this transaction positions DYNAWELL within a respected U.S. public company that has an energy sector orientation, which will enhance DYNAWELL's opportunity for future growth."

Rospek, 49, will continue to serve as the chief executive of DYNAenergetics, and also has been appointed to the DMC board. Dean Allen, chairman, said, "Rolf is a respected veteran of the specialized explosive services sector and brings deep industry experience to our board. His talent as a leader is reflected in DYNAenergetics' financial success, which includes compound annual revenue growth of approximately 25% during the past five years. We are extremely pleased to welcome him as a director."

In connection with the acquisition, DMC entered into a dollar- and euro-denominated credit facility valued at approximately \$100 million DMC borrowed approximately \$65 million under the new facility to fund a portion of the purchase price. JP Morgan was the lead credit arranger for this facility, which was provided by a syndicate of seven banks. Green Manning & Bunch acted as exclusive financial advisor to DMC with respect to the DYNAenergetics acquisition.

#### About Dynamic Materials Corporation

Based in Boulder, Colorado, Dynamic Materials Corporation is a leading international metalworking company. Its products, which are typically used in industrial capital projects, include explosion-welded clad metal plates and other metal fabrications for use in a variety of industries, including upstream oil and gas, oil refinery, petrochemicals, hydrometallurgy, aluminum production, shipbuilding, power generation, industrial refrigeration and similar industries. The Company operates two business segments: Explosive Metalworking, which uses proprietary explosive processes to fuse different metals and alloys, and AMK Welding, which utilizes various technologies to weld components for use in power-generation turbines, as well as commercial and military jet engines. For more information, visit the Company's website at <a href="http://www.dynamicmaterials.com">http://www.dynamicmaterials.com</a>. Additional information regarding DYNAenergetics is available at <a href="http://www.dynamicraterials.com">http://www.dynamicraterials.com</a>. Additional information regarding DYNAenergetics is available at <a href="http://www.dynamicraterials.com">http://www.dynamicraterials.com</a>.

#### Safe Harbor Language

Except for the historical information contained herein, this news release contains forward-looking statements that involve risks and uncertainties including, but not limited to, the following: our ability to integrate the DYNAenergetics business, DYNAenergetics ability to continue the rate of its sales, net income and growth; as well as the other risks

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detailed from time to time in the Company's SEC reports, including the report on Form 10-K for the year ended December 31, 2006.