



For the avoidance of doubt, this document is in a non-binding, recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.

This document assumes to be built in, or function as an appendix to, the LMA long-form term sheet. All terms and provisions should be considered in light of the overall transaction.

Users should consider the FAAN Borrowing Base Ancillary – Guidance Note before using this document.

## PART 1 BORROWING BASE FACILITY

**Facility:** Borrowing base facility, consisting of a [multicurrency] receivables financing facility [and an inventory financing facility].

**Ancillary Facility:** All of the Borrowing Facility Commitments shall be made available as an Ancillary Facility under an Ancillary Document based on the FAAN Borrowing Base Ancillary Document, to be entered into between, amongst others, the relevant Borrowers under the Borrowing Base Facility, the Borrowing Base Agent and the Borrowing Base Lenders (the "**Borrowing Base Ancillary Document**").

**Amount:** [•].

**Optional Currencies:** If readily available when required (and to the extent there are applicable Reference Rate Terms) [•] and [•] or such other currency approved by the Borrowing Base Agent.

**Borrowers:** [The Company.]

*[List any other Subsidiaries of the Company that are to be Original Borrowers under the Borrowing Base Facility or to accede as Borrowers following the Closing Date.]*

**Borrowing Base Lenders:** [•].

**Borrowing Base Agent (and fronting agent):** [•].

The Borrowing Base Agent shall be fronting the lending activities of the Borrowing Base Lenders under the Borrowing Base Ancillary Document.

**Borrowing Base Security Agent:** [•].



<b>Ranking:</b>	<i>Pari passu</i> with each other Facility. <sup>1 2</sup>
<b>Termination Date:</b>	[•].
<b>Purpose:</b>	The general corporate and working capital purposes of the Group [(excluding the acquisition of companies or businesses)].
<b>Availability Period:</b>	From [the date of the Agreement] to [•].
<b>Limitation on Utilisation:</b>	The Ancillary Document shall not become available [unless each Term Facility has been utilised and] the conditions precedent in the Ancillary Document have been satisfied.
<b>Repayment:</b>	<p>All amounts outstanding under the Borrowing Base Facility shall be repaid on the last day of the applicable Availability Period.</p> <p>All amounts received by the Borrowing Base Agent under or in connection with the Finance Documents, may, at any time, be set-off and applied towards repayment of any (matured or unmatured) obligations of the Borrower[s] under the Finance Documents.</p>

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<sup>1</sup> Guidance note: priority in waterfall for proceeds from certain (BB) assets.

<sup>2</sup> To be considered in light of debt structuring – this Term Sheet assumes that all Facilities are senior and *pari passu*.



## **PART 2 FEES**

<b>Arrangement Fee:</b>	[•] per cent. flat on the base currency amount of the Borrowing Base Facility, payable [•].
<b>Borrowing Base Agency and Security Agent Fee:</b>	[•] payable [•].
<b>Commitment Fee:</b>	Borrowing Base Facility: [•] per cent. per annum, on the unused and uncanceled amount of the Borrowing Base Facility for the applicable Availability Period. Accrued commitment fee is payable on the first day of each successive calendar month during the relevant Availability Period, on the last day of the applicable Availability Period and on the cancelled amount of Borrowing Base Facility at the time a full cancellation is effective.
<b>Borrowing Base Fee:</b>	[•] per cent. per annum flat on the base currency amount of the Borrowing Base Facility, payable [•].
<b>Margin:</b>	[•] per cent. per annum.

### PART 3 DETERMINING THE BORROWING BASE

**Borrowing Base:**

The [aggregate]<sup>3</sup> of:

- (a) the nominal value (including VAT, if applicable) of the Eligible Receivables multiplied by the Advance Rate, minus the amount of any Receivables Reserve (the "**Borrowing Base Receivables Amount**")<sup>3</sup>./[; and]
- (b) the Value of Eligible Inventory multiplied by the Advance Rate, minus the amount of any Inventory Reserve (the "**Borrowing Base Inventory Amount**")<sup>4</sup>.

**Advance Rate:**

In respect of:

- (a) [•] per cent of the Eligible Receivable./[; and]
- (b) [•] per cent of the Value of the Eligible Inventory],

subject to the Adjustment Rights set out below.

**Eligible Receivable:**

[Means any [trade] receivable of the Borrower that meets the criteria specified in Part [•] of Schedule [•] to this Term Sheet.]<sup>5</sup>

[As per the FAAN Borrowing Base Ancillary Document, including:

- (a) [which (together with any Related Rights) [is not subject to any restriction of assignability or encumbrance with *in rem* effect (*goederenrechtelijke werking*) or similar] [is, if subject to any restriction of assignability or encumbrance with *in rem* effect (*goederenrechtelijke werking*) or similar, only eligible if and to the extent that:[•]]; and

<sup>3</sup> Only insert in case of inventory facility.

<sup>4</sup> Only insert in case of inventory facility.

<sup>5</sup> To be considered whether the deal dynamics are appropriate to include full set of eligibility criteria, or only the deal specifics.

- (b) is denominated in euro, [USD][,][or] [GBP][, or [•]];
- (c) which does not have a payment term that exceeds [•] days;
- (d) which is not outstanding for more than [•] days after expiry of the applicable payment term [and not outstanding for more than [•] days from the original date specified in an invoice;
- (e) [which is not subject to any set-off right of the Debtor or similar rights or reductions][which may be subject to a set-off right of the Debtor, provided that only the net value after deduction of the counterclaim of the Debtor is eligible[, if the counterclaim amounts to less than [•] per cent. of the Receivables owed by the relevant Debtor to that Borrower]<sup>6</sup>;
- (f) which is subject to [Dutch, [•]] law;
- (g) of which the Debtor is established in:
  - (i) a member state of the European Union, the United Kingdom, Switzerland, Iceland, Norway or Turkey;
  - (ii) a country that is not included in (i), but is a member of the Organisation for Economic Co-operation and Development (OECD) as long as the aggregate amount of the Receivables owed by Debtors in such countries does not at any time exceed [•] per cent. of all Eligible Receivables; or
  - (iii) a non-OECD country, as long as the aggregate amount of the Receivables owed by Debtors in such countries does not at any time exceed [•] per cent. of all Eligible Receivables [, it being understood that if the maximum non-OECD Debtors percentage threshold is exceeded, only such excess with respect to these Debtors and their Receivables shall be

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<sup>6</sup> Certain Borrowing Base Agents may require the part between brackets.

excluded for purposes of calculating the Borrowing Base;

- (h) of which the Debtor does not owe Receivables to the Borrower[s] of which an aggregate amount of [•] per cent. or more is overdue [•];
- (i) of which the Debtor does not owe Receivables in respect of which the Concentration Percentage exceeds [•]% at any time (the "**Maximum Concentration Percentage**"), and, if this threshold is exceeded, such excess with respect to these Debtors and their Receivables shall not qualify as eligible; and
- (j) does not owe Receivables exceeding the due date for more than [•] per cent of the aggregate principal outstanding amount.

**Eligible Inventory:**

[Means any inventory owned by a Borrower that meets the criteria specified in Part [•] of Schedule [•] to this Term Sheet.]<sup>7</sup>

[As per the FAAN Borrowing Base Ancillary Document, including:

- (a) which consists of [raw materials], [semi-finished goods], [finished goods];
- (b) which is stored for a maximum period of [•] days under Satisfactory Storage Conditions; and
- (c) [if the age is unknown of the Inventory, may not at any time, exceed [•] per cent of the aggregate amount of the Advances made in respect of all Eligible Inventory.

**Borrowing Base Facility Availability:**

The balance of:

- (a) the Borrowing Base [in each case, taking into account and subject to the [Maximum Debtor/Inventory Ratio]/[Inventory Sub-Limit]];<sup>8</sup>
- (b) [increased by the amounts received by the Borrowing Base Agent [into the Collection

<sup>7</sup> To be considered whether the deal dynamics are appropriate to include full set of eligibility criteria, or only the deal specifics.

<sup>8</sup> Only insert in case of inventory facility in EUR.

Account]<sup>9</sup> [pursuant to the Cash Sweep]<sup>10</sup> since the Borrowing Base Facility Availability has most recently been determined;

- (c) decreased by the aggregate outstanding amount of Advances; and
- (d) decreased by the outstanding amount of the aggregate interest, fees, costs and other charges due and payable by the Borrower[s] under or pursuant to the Borrowing Base Documents.

**[Inventory Sub-Limit:**

The lower of:

- (a) [EUR [•]]; [and
- (b) the Borrowing Base Inventory Amount remaining after applying the Maximum Debtor/Inventory Ratio at any time [•]].<sup>11</sup>

**Maximum Concentration Percentage:**

[•] per cent.

**Maximum Debtor/Inventory Ratio:**

[•] per cent.

**Maximum Dilution Percentage:**

[•] per cent.

The Borrowing Base Agent shall determine the Dilution and Dilution Percentage at the end of each [financial [quarter] [half-year] [financial year] on a [3-months rolling] [semi-annual] [annual] basis (and more often if the Borrowing Base Agent considers it necessary).

**Adjustment Rights:**

The Borrowing Base Agent may (at its sole discretion and where practicable after consultation with the Company, but in each case with immediate effect), decide to:

- (c) reduce the Advance Rate; and/or
- (d) reduce any limit or threshold included in the eligibility criteria,

<sup>9</sup> Only insert in the case that an *inzakerekening* is used as Collection Account.

<sup>10</sup> Only insert in the case that Collections Accounts are not held in the form of an *inzakerekening* and a Cash Sweep is in place.

<sup>11</sup> Only insert Maximum Debtor/Inventory Ratio if applicable.

in the event that the Borrowing Base Agent:

- (a) determines that, on the basis of operational Field Audits, Debtor verifications or otherwise, there is a material adverse effect on:
  - (i) the value, validity or enforceability of the Receivables (including a deterioration of the creditworthiness of the relevant Debtors) [or Inventory];
  - (ii) the Security under any Transaction Security Document to which the Borrowing Base Security Agent is a party; and/or
  - (iii) the rights and remedies of the Borrowing Base Lenders under the Finance Documents; and/or
- (b) suspects an Event of Default is continuing.



## PART 4 OTHER TERMS

### **Borrowing Base Transaction Security:**

First priority security over trade receivables (eligible receivables), [inventory (including eligible inventory)], collection accounts, insurance proceeds relating to receivables [and inventory (including transport)], and trademark rights (no registration).

### **Collection Accounts:**

[To be held in the Borrowing Base Agent's own name (but for external purposes referring to the relevant Borrower) with the Borrowing Base Agent having the sole power of disposal in respect of such Collection Account.]/[To be held with an Account Bank and provided that [(i) such bank accounts are subject to Transaction Security;] [(ii) shall not be subject to any rights of set-off for the benefit of the Account Bank and/or any security other than Transaction Security [and (iii) any amounts standing to the credit thereof shall be paid on a [weekly] basis to a bank account indicated by the Borrowing Base Agent].

### **Mandatory Prepayment:**

#### **(a) Mandatory Prepayment – Borrowing Base Deficit**

If, at any time, the Borrowing Base Agent determines that a Borrowing Base Deficit has occurred, the Company shall (or shall ensure that the Borrower[s] will) within [•] Business Days:

- (i) prepay the outstanding [Euro Equivalent Amount of the] Advances; and/or
- (ii) submit additional Eligible Receivables [and/or Eligible Inventory] to the Borrowing Base Agent [and immediately thereafter an updated Borrowing Base Certificate confirming there is no Borrowing Base Deficit],

in each case, in an amount that, following such prepayment or submission, results in the

Borrowing Base Deficit becoming at least zero.

**"Borrowing Base Deficit"** means that the Borrowing Base Facility Availability is less than zero.

**(b) Mandatory Prepayment - Disposals**

All sale proceeds of all disposals of trade receivables (eligible receivables), [inventory (including eligible inventory)] or trademark rights, shall be applied in prepayment of the Borrowing Base Facility.

**(c) Mandatory Prepayment - Insurance Proceeds**

All proceeds of any insurance claim under any insurance maintained by any member of the Group in respect of receivables [and inventory (including transport)] shall be applied in prepayment of the Borrowing Base Facility.

**(d) Application of Mandatory Prepayment Proceeds**

The mandatory prepayment proceeds specified in (a), (b) and (c) above shall be applied in prepayment of the Borrowing Base Facility and, only if any proceeds remain, in prepayment of the other Facilities in the order as specified [below][above][in this Term Sheet].

**Information undertakings:**

As per the FAAN Borrowing Base Ancillary Document, including:

- (a) each [•], an updated Receivables Identification File;
- (b) each [•], an overview of all its creditors (including trade and retention creditors);
- (c) [each [•], all information on bonuses, [and] discounts [and royalties];]<sup>12</sup> and

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<sup>12</sup> Only insert if bonuses are applicable.

- (d) [each [Financial Quarter]][half year][financial year] calculations in reasonable detail of the Dilution Percentage].

**General undertakings:**

As per the FAAN Borrowing Base Ancillary Document.

**Events of Defaults**

As per the FAAN Borrowing Base Ancillary Document, including:

- (a) A Borrower does not comply with the information undertakings in the FAAN Borrowing Base Ancillary Document [provided that no Event of Default will occur if the failure to comply is capable of remedy and is remedied within [•]<sup>13</sup> Business Days of the earlier of (i) the Borrowing Base Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply].
- (b) [The Dilution Percentage exceeds [•]<sup>14</sup>% on [•] consecutive Dilution Testing Dates.]
- (c) An Obligor does not comply with any provision of the Borrowing Base Documents provided that no Event of Default will occur if the failure to comply is capable of remedy and is remedied within [•]<sup>15</sup> Business Days of the earlier of (i) the Borrowing Base Agent giving notice to the Obligor and (ii) the Obligor becoming aware of the failure to comply.

**Acceleration:**

The Borrowing Base Agent (acting on instructions of [all] Borrowing Base Lenders) shall, on and at any time after the occurrence of an Event of Default which is continuing, have acceleration rights as per the FAAN Borrowing Base Ancillary Document.<sup>16</sup>

<sup>13</sup> TBC by relevant Borrowing Base Lenders.

<sup>14</sup> This would generally be a higher percentage than the Maximum Dilution Percentage.

<sup>15</sup> TBC by relevant Borrowing Base Lenders.

<sup>16</sup> Reference is made to the FAAN Borrowing Base Ancillary – Guidance Note. If this is not the agreed position, other debt layers are applicable or an Intercreditor Agreement is put in place, parties should consider (and specify in this Term Sheet) the agreed approach in respect of acceleration, instructions and voting under the Facilities Agreement and/or Intercreditor Agreement.



**Conditions Precedent:**

Conditions precedent applicable to the FAAN Borrowing Base Ancillary Document (in addition to the conditions precedent in the Agreement):

- (a) Completion by the Borrowing Base Agent of its operational Field Audit and debtor verification (and satisfactory outcome).
- (b) Copies of all [credit, storage, inventory and transport] insurances policies, including evidence of the Borrowing Base Agent being named a loss payee and/or co-insured party.
- (c) Evidence that all Collection Accounts and Funding Accounts have been set up.
- (d) [Borrowing Base Certificate].
- (e) Evidence that the Online Portal has been set up and the Receivables Identification Files [and Inventory Identification Data] can be delivered.

**Definitions:**

Terms defined in the FAAN Borrowing Base Ancillary Document have the same meaning in this Term Sheet unless given a different meaning in this Term Sheet.