

DEBENTURE TRUST DEED

between

FOORD COMPASS LIMITED

and

JOHN ADRIAN LEVIN
(representing the debenture holders as Trustee)

PREAMBLE

The purpose of this Deed is to replace and supersede in their entirety the Principal Debenture Trust Deed, the First Supplemental Debenture Trust Deed and the Second Supplemental Debenture Trust Deed between the Company and Michael Mervyn Katz concluded on 2 November 1987, and the Third Supplemental Debenture Trust Deed between the Company and Louis van Zyl concluded on 12 December 2002.

NOW THEREFORE IT IS AGREED AS FOLLOWS

1. DEFINITIONS

- 1.1. In this deed (including this clause), unless inconsistent with the context, the following words and expressions shall have the meaning assigned to them:

"the Act"	the Companies Act, 1973, as amended or any statute(s) which may be substituted for that Act;
"business day"	any day excluding a Saturday, Sunday or public holiday in the Republic of South Africa;
"capital profits or losses"	profits or losses that the board of directors, after consideration of the prevailing tax laws, has determined to be of a capital nature;
"capitalisation debentures"	debentures issued to debenture holders in part or full settlement of debenture interest or a distribution of net attributable asset value;
"the Company"	Foord Compass Limited;
"CSD"	Central Securities Depository, in terms of the Custody and Administration of Securities Act, 1992 (act 85 of 1992), as amended;

“CSDP”	Central Securities Depository Participant - A depository institution admitted by the CSD as a participant in terms of the Securities Services Act, No.36 of 2004, the CSD Rules and the CSD entry criteria, which holds securities in the CSD in its own name, and can electronically deliver securities to other CSD participants in settlement of securities transactions, either for its own account or on behalf of clients;
“debentures”	unsecured debentures issued by the Company in terms of this or any preceding debenture trust deed, each debenture having a nominal value equal to the amount received by the company on the issue of each such debenture;
"debenture certificates"	the debenture certificates issued in terms of or pursuant to this deed;
"debenture holders"	the registered holders for the time being of the debentures;
“debenture interest”	interest payable on the debentures in terms of this deed;
“distribution date”	the interim date or the year-end date, as the case may be
“distributable income”	profit or loss before debenture interest and taxation, but excluding realised and unrealised capital profits or losses and excluding unrealised revenue profits or losses;
“interim date”	30 June of each financial year of the Company;
“interim debenture interest”	interest payment in terms of clause 5.2 for the six months ending on the interim date;
"the JSE"	JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2005/022393/06, licensed as an exchange under the Securities Services Act, 2004;
“net attributable asset value per debenture”	the net attributable asset value divided by the number of debentures in issue;

“net attributable asset value”	<p>net attributable asset value of the debentures means, on a cumulative basis:</p> <ul style="list-style-type: none"> ▪ The aggregate proceeds received or receivable on issue of debentures in terms of this deed, in ZAR, net of related debenture issue expenses and net of any distributions of net attributable asset value, <i>plus or minus</i> (as the case may be); ▪ An annual revaluation adjustment amounting to a 90% (ninety percent) proportionate share of the audited profit or loss before debenture interest and taxation for the year, <i>less</i>; ▪ The annual debenture interest amount, <i>less</i>; ▪ A proportionate share of the SA normal taxation charge applicable to amounts credited to the net attributable asset value of the debentures, but <i>excluding</i>; ▪ Any debenture interest unpaid on the debentures, which will constitute a separate current liability in favour of debenture holders recorded as such in the debenture register on the interest distribution record date;
“market value per debenture”	the reference price of the debentures as quoted on the JSE;
"ordinary resolution"	a resolution passed at a properly constituted meeting of debenture holders, upon a show of hands, by a majority of the debenture holders present in person and voting thereat, or, if a poll is duly demanded, by a majority of the votes cast at such poll by debenture holders present in person or by proxy;
“profit or loss before debenture interest and taxation”	consolidated profit or loss before taxation determined in accordance with International Financial Reporting Standards, including both realised and unrealised gains or losses, whether of a revenue or capital nature, and before deducting any debenture interest payment;
“reference price”	the last auction or automated trade price, whichever is the most recent, or in the absence of an auction or last trade price, a price as determined by the JSE;

"register"	the register or, as the case may be, registers of debenture holders maintained by the Company in terms of the Act;
"related debenture issue expenses"	shall have the meaning assigned to them in terms of clause 2.6;
"special resolution of debenture holders"	a resolution passed at a properly constituted meeting of debenture holders, upon a show of hands, by a majority consisting of not less than 75% of the debenture holders present in person and voting thereat, or, if a poll is duly demanded, by a majority consisting of not less than 75% of the votes cast at such poll by debenture holders present in person or by proxy;
"STRATE"	STRATE Limited (registration number 1998/022242/06), a registered CSD in terms of the Custody and Administration of Securities Act, 1992 (act 85 of 1992), as amended;
"this deed" or "the deed"	this debenture trust deed and any schedules hereto;
"the first record date"	a date fixed by the directors of the Company, prior to any payment of interim debenture interest in respect of any financial year, for the determination of the debenture holders entitled to receive that interim payment and which shall, if the debenture is listed on the JSE, always be on such a day as is acceptable to the JSE;
"the second record date"	a date fixed by the directors of the Company, prior to the final payment of debenture interest in respect of any financial year, for the determination of the debenture holders entitled to receive that final interest payment and which shall, if the debenture is listed on the JSE, always be on such a day as is acceptable to the JSE;
"taxation"	South African Normal Taxation determined in accordance with International Financial Reporting Standards as applied to South African tax legislation;
"the transfer office"	the office of the transfer secretaries of the Company from time to time;

"the Trustee" John Adrian Levin, and his successors in title, and any future Trustee appointed under this deed, whilst acting in that capacity and who, at all times, will have no interest or relationship with the Company that might conflict with his position as Trustee;

"year end date" 31 December of each financial year of the Company.

1.2. Unless the context otherwise requires, words importing:

1.2.1. any one gender shall include any other gender;

1.2.2. the singular shall include the plural and *vice versa*;

1.2.3. natural persons shall include bodies corporate and associations of persons and *vice versa*.

1.3. Clause headings are for purposes of convenience only and shall not affect the interpretation of this deed.

1.4. It is recorded that:

1.4.1. the Company may from time to time create and resolve to issue debentures of which the unsecured variable rates will be governed by this deed;

1.4.2. subject to clause 2.2 relating to the price of a debenture issue, any issue of debentures in terms of clause 2.1 shall be on the same terms and conditions as any other issue of debentures and the debentures shall rank *pari passu* with all other debentures;

1.4.3. the Trustee has agreed to act under this principal debenture trust deed as Trustee for the holders of the debentures issued in terms of the aforesaid issues.

2. ISSUE OF DEBENTURES

2.1. The directors of the Company may by resolution, and subject to clauses 2.2, 2.3, 2.4 and 2.6 resolve to create and issue debentures to be governed by this deed and to be issued subject to the terms of this deed.

- 2.2. The issue of debentures to be governed by this deed shall be subject to the consent and approval, respectively, of the Trustee, which consent and approval shall not unreasonably be withheld, provided that in the event that debentures are issued at a price that is equal to or greater than the net attributable asset value per debenture calculated on the last day of the calendar month preceding the proposed debenture issue date, the approval of the trustee shall not be required.
- 2.3. Subject to the requirements of the Act and the Listings Requirements of the JSE, all issues of debentures to be governed by this deed, subsequent to the first such issue of such debentures, may only be issued by way of:
- 2.3.1. a rights offer to the debenture holders who may be entitled thereto at the relevant time; or
 - 2.3.2. as direct consideration for the acquisition by the Company of any assets; or
 - 2.3.3. for cash; or
 - 2.3.4. as part or full settlement of interest on debentures due to debenture holders; or
 - 2.3.5. as part or full settlement of a distribution of net attributable asset value to debentures holders; or
 - 2.3.6. by way of an issue of debentures to a wholly owned subsidiary.
- 2.4. All debentures issued in terms of this deed shall:
- 2.4.1. in the event of the liquidation or winding up of the Company, no matter when issued, rank *pari passu* in all respects with regard to payment of interest in terms of clause 5 and repayment in terms of clause 8.1;
 - 2.4.2. for the purposes of payment to them of the respective amounts due to debenture holders in respect of redemption in terms of clause 8.2, rank *pari passu* in all respects.
- 2.5. Each issue of the debentures is conditional on the JSE granting a listing for the debentures concerned and the Company undertakes to use its best endeavours to maintain such listing for so long as the debenture remains in issue.
- 2.6. Debenture issue costs directly related to the issue of debentures, including but not limited to any commissions, fees, audit fees, corporate finance fees, sponsor fees and marketing fees, are to be immediately debited to the proceeds on issue of debentures and shall not form part of the determination of profit or loss before taxation.

3. UNCERTIFICATED DEBENTURES, DEBENTURE CERTIFICATES AND TRANSFER

- 3.1. The provisions of section 91A of the Act and the JSE Rules and Regulations relating to uncertificated securities shall apply in respect of the debentures.
- 3.2. In the case of persons that do not hold uncertificated debentures, and subject to the provisions of section 91A of the Act and the JSE Rules and Regulations:
 - 3.2.1. every person whose name is entered in the register of debenture holders, or any subregister, shall be entitled to one or more certificates for all the debentures registered in their name;
 - 3.2.2. debenture certificates issued in terms of 3.2.1 shall be issued under the authority of the directors, or the transfer secretaries when authorised by a resolution of the directors, in such manner and form as the directors may prescribe, provided that every debenture certificate shall be issued within 21 days and specify the number of debentures in respect of which it is issued;
 - 3.2.3. each debenture certificate shall be signed by two directors of the Company or by one director of the Company and an officer of the Company duly authorised thereto by the directors;
 - 3.2.4. if any debenture certificate is defaced, lost or destroyed, the Company may cancel such certificate and the Company shall issue a substitute certificate in place of the original to the person entitled thereto on such terms as the directors may think fit;
 - 3.2.5. debenture certificates registered in the names of two or more persons shall be sent or delivered to the person first named in the register of debenture holders as the holder thereof, and postage or delivery of a debenture certificate to that person shall be deemed to be sufficient delivery to all joint holders of that debenture certificate.
- 3.3. The transfer of uncertificated securities shall take place in accordance with and in the manner contemplated in the Act.
- 3.4. In the case of persons that do not hold uncertificated debentures, and subject to the provisions of section 91A of the Act and JSE Rules and Regulations, the transfer of certificated securities shall take place in accordance with, and the manner contemplated in, the Act and this deed. Any debenture holder may transfer all or any of their certificated debentures in the common or any other form that the directors may approve, provided that:

- 3.4.1. the directors or the transfer secretaries may decline to recognise any instrument of transfer unless the transfer form is signed by the registered holder or their duly authorised agent, and is delivered to the transfer secretaries accompanied by the debenture certificate to which it relates;
- 3.4.2. the transferor shall be deemed to remain the holder of the certificated debenture until the name of the transferee is entered in the register of debenture holders in respect thereof;
- 3.4.3. the Company shall not be bound to enter in the register notice of any trust, or minor, or to recognise any right of any other person to the debenture or to the benefit of the debenture;
- 3.4.4. no transfer of any debenture shall be registered when the register is closed.

4. REGISTER

- 4.1. The Company shall, in terms of the Act, keep a register and/or sub-register of debenture holders.
- 4.2. The register and/or sub-register of debenture holders:
 - 4.2.1. shall be kept at the Company's office or transfer office, as the Company deems fit;
 - 4.2.2. may consist of one or more books or sheets or may be in such other form as the Company may deem fit;
 - 4.2.3. shall contain the names and addresses of the debenture holders and the number of debentures held by each of them;
 - 4.2.4. shall show the date on which each debenture holder becomes registered as such.
- 4.3. Subject to the provisions of the Company's articles of association and such reasonable restrictions as the Company may, in general meeting, impose:
 - 4.3.1. subject to clause 4.3.2, the register of debenture holders shall be open for inspection for at least 2 hours, to be appointed by the Company, on every business day;

- 4.3.2. the register of debenture holders shall be closed for such period or periods during any year as the Company may deem fit, provided that the aggregate of such periods may not exceed more than 60 days in any year.

5. INTEREST

- 5.1. Debenture holders shall become entitled annually on the last day of the Company's financial year to:
 - 5.1.1. debenture interest in the aggregate amounting to not less than 90% (ninety percent) of the Company's distributable income for that financial year; less
 - 5.1.2. the amount of any interim debenture interest received by debenture holders during the course of the financial year referred to in clause 5.1.1; provided that
 - 5.1.3. the directors may increase the debenture interest distribution to an amount greater than 90% (ninety percent) of the Company's distributable income for the particular financial year under consideration.
- 5.2. The directors may declare an interim debenture interest distribution at the interim date.
- 5.3. If the Company changes the date upon which its financial year ends, the Company and the Trustee shall be and they are hereby authorised by the debenture holders to change the dates by reference to which the first record date and the second record date are determined and the interest is calculated, falls due, accrues and becomes payable, provided that:
 - 5.3.1. the rights of the debenture holders to interest on their debentures shall not be diminished or adversely affected by such changes;
 - 5.3.2. the changes are approved by the Trustee, which approval shall not unreasonably be withheld; and
 - 5.3.3. the Company shall forthwith notify debenture holders by circular of the changes made.
- 5.4. Distributions of interest at the interim and year end dates shall accrue to all debenture holders in proportion to the number of debentures held by each debenture holder as a percentage of the total number of debentures in issue.
- 5.5. Only the registered holders of the debentures on the first record date and the second record date respectively shall be entitled to the payment of interest. In that regard:

- 5.5.1. the Company shall, not less than fifteen business days or such other time as stipulated by the JSE if the debentures are listed before any record date, publish a notice of such record date in accordance with the JSE Listings Requirements;
- 5.5.2. the directors of the Company may close the register for a period not exceeding five business days prior to a first record date and a second record date subject to the JSE Listings Requirements.
- 5.6. Upon the issue of debentures in terms of clauses 2.1 and 2.3, existing debenture holders shall become entitled to a debenture interest distribution on the day immediately preceding the planned debenture issue, determined in accordance with the annual debenture interest calculation.

6. PAYMENTS OF DEBENTURE INTEREST TO DEBENTURE HOLDERS

- 6.1. The Company will reasonably endeavour to pay the debenture interest and interim debenture interest referred to in 5 within two calendar months of the year end date and interim date respectively.
- 6.2. In the case of uncertificated debentures, debenture interest will be paid by electronic funds transfer to the debenture holder's CSDP for credit to his broker's nominee account or his account with that CSDP.
- 6.3. In the case of certificated debentures, debenture interest may be paid by cheque sent through the post to the registered address of the debenture holder or, in the case of joint holders, to the registered address of that joint holder whose name appears first on the register or to such person and to such address as the debenture holder or first name joint holder may, in a manner acceptable to the Company, in writing direct, provided that:
 - 6.3.1. the Company shall not be responsible for any loss in transmission and the postal authorities shall be deemed to be the agent of the debenture holders for the purpose of all such payments;
 - 6.3.2. payment of the cheque shall be a valid discharge of the Company and the Trustee.
- 6.4. Subject to 2.2, the board of directors may direct that any debenture interest distribution may be settled:
 - 6.4.1. in part or in whole by means of issuing capitalisation debentures in lieu of cash; or

6.4.2. by providing debenture holders with an option to receive a combination of cash or capitalisation debentures based on their elections.

6.5. Subject to 2.2, the number of capitalisation debentures to be issued in terms of 6.4 will be determined in accordance with the provisions of this deed.

7. PAYMENTS OF NET ATTRIBUTABLE ASSET VALUE TO DEBENTURE HOLDERS

7.1. The directors may from time to time declare a distribution of net attributable asset value to debenture holders, which distribution:

7.1.1. shall be debited directly to the net attributable asset value of the debentures at the date of the distribution; and

7.1.2. shall not form part of the determination of debenture interest in terms of clause 5.1.1.

7.2. Payments of net attributable asset value to debenture holders in terms of clause 7.1 above will not constitute a redemption of debentures in terms of clause 8.1 below and will not impact the number of debentures in issue.

7.3. Subject to 2.2, the board of directors may direct that any distribution of net attributable asset value may be settled:

7.3.1. in part or in whole by means of issuing capitalisation debentures in lieu of cash; or

7.3.2. by providing debenture holders with an option to receive a combination of cash or capitalisation debentures based on their elections.

7.4. Subject to 2.2, the number of capitalisation debentures to be issued in terms of 7.3 will be determined in accordance with the provisions of this deed.

8. REDEMPTION OF DEBENTURES

8.1. The debentures shall become repayable at the value determined in accordance with clause 8.3.2:

8.1.1. forthwith, subject to clause 9.2.1, if a final order of a competent court is made or an effective resolution is passed for the winding up of the Company; or

8.1.2. if the debenture becomes repayable in terms of clause 9.

8.2. The debentures shall not be redeemable at the instance of any debenture holder or holders unless such debenture holders pass a special resolution to this effect, or unless otherwise provided by clause 9.

8.3. Upon the debentures becoming repayable for any reason in terms of clauses 8.1 or 9:

8.3.1. the Company shall ensure that financial statements are prepared at the effective date of redemption and duly audited by the Company's auditors; and

8.3.2. the registered holder of each debenture shall be entitled to receive the audited net attributable asset value per debenture together with any unpaid debenture interest thereon.

9. SUMMARY REPAYMENT OF DEBENTURES

9.1. If the Trustee so requires in terms of clause 9.3, the debentures, together with interest thereon and all other monies payable in terms of this deed, shall become repayable immediately on the happening of any of the following events:

9.1.1. the Company fails to pay any monies due by it in terms of this deed on the due date thereof and thereafter persists in such failure for a further twenty-one business days after receipt by it of a written notice from the Trustee, given in the manner prescribed in clause 19, demanding that that payment be made;

9.1.2. the Company commits:

9.1.2.1. a material breach of any material obligation under this deed, which cannot be remedied; or

9.1.2.2. a material breach of any non-material obligation, or a non-material breach of any obligation, under this deed, which cannot be remedied, and fails, within twenty-one business days after receipt by it of a written notice from the Trustee, given in the manner prescribed in clause 19, requiring it to do so, to initiate and thereafter to pursue all proper steps designed to prevent its recurrence; or

9.1.2.3. any breach of any obligation under this deed, which can be remedied, and fails within twenty-one business days, or such longer period as may reasonably be required in the circumstances, after receipt by it of a written notice from the Trustee, given in the manner prescribed in clause 19, requiring the breach to be remedied, to remedy the breach.

9.1.3. the Company:

9.1.3.1. makes any alteration to the provisions of its memorandum or articles of association which, in the opinion of the Trustee, adversely affects the interests of the debenture holders; or

9.1.3.2. is granted a final order or passes an effective resolution for the reorganisation or reconstruction of the Company in terms of section 311 of the Act,

provided that the above clauses 9.1.3.1 to 9.1.3.2 shall not apply if the event in question:

9.1.3.3. in the reasonable opinion of the Trustee, does not adversely affect the interests of the debenture holders and/or relates to a reorganisation or reconstruction or a merger or takeover, whether or not governed by the provisions of the Act; or

9.1.3.4. is sanctioned by a special resolution of debenture holders;

9.1.4. a final order is made placing the Company under judicial management;

9.1.5. any material assets of the Company are attached under a writ of execution issued out of any court in the Republic of South Africa as a result of a final judgement against the Company and the writ is not satisfied or set aside within twenty-one business days after the attachment has come to the notice of the board of directors of the Company; or

9.1.6. the Company ceases to carry on its business.

9.2. For the purposes of clause 9.1:

9.2.1. an order of Court shall not be deemed to be final unless, being appealable, the period for noting such appeal has lapsed without an appeal being noted, or having been noted, the appeal is dismissed, abandoned or not proceeded with within the period prescribed by the Rules of Court as extended, if at all, by the Court;

- 9.2.2. any attachment referred to in clause 9.1.5 shall be deemed to have come to the notice of the board of directors of the Company, within twenty-one business days of being made, unless the contrary shall be shown. The period of twenty-one business days referred to in clause 9.1.5 shall be extended, pending any proceedings begun to set aside that writ or remove the attachment, until twenty-one business days after a final and unappealable judgment refusing that setting aside or removal. The term "writ of execution" in clause 9.1.5 does not include a writ of attachment "*ad fundandam jurisdictionem*" or "*ad confirmandam jurisdictionem*."
- 9.3. Upon the happening of any of the events referred to in clause 9.1, the Trustee may, in its discretion, require the debentures together with interest accrued thereon, to be repaid in accordance with the this deed, and may, in addition, enforce the powers contained in this deed by giving written notice to the Company, in the manner prescribed in clause 19, to that effect. The Trustee shall be bound to give such notice if required to do so by a special resolution of debenture holders. The Trustee shall further be entitled to take legal action to enforce the provisions hereof.
- 9.4. The Trustee shall be entitled, before carrying out the directions of debenture holders, to require that the debenture holders furnish it with sufficient monies to enable it to meet the expense of giving effect to such directions.
- 9.5. Notwithstanding any provisions of this deed to the contrary, the Trustee shall have a discretion not to act in terms of this clause 9 if, on receipt by the Company of the notice referred to in clause 9.3, the default or breach complained of is remedied in such manner that, in the Trustee's sole and absolute opinion, the debenture holders will not be prejudiced by non-enforcement of the Trustee's rights in terms of this clause 9.
- 9.6. The Trustee shall not be required to take any steps to ascertain whether any event, upon the happening of which the debenture is liable to become repayable, shall have occurred and unless and until the Trustee shall have knowledge or shall have been served with express written notice of such happening in the manner prescribed in clause 19, it shall be entitled to assume that no such event has taken place.
- 9.7. Subject to the provisions of Section 123 of the Act, the Trustee shall not be responsible for any loss to any debenture holder or the Company or any other person resulting from the exercise or non-exercise of the powers, authorities or discretions vested in the Trustee in terms of this deed.
- 9.8. A debenture holder shall not be entitled to enforce his rights under this deed, but all rights of enforcement shall vest in the Trustee in accordance with the provisions of this deed.

10. APPLICATION OF MONIES BY TRUSTEE

10.1. All monies received by the Trustee after it has exercised or arising from the exercise of any power conferred on it by this deed and all monies due to debenture holders in its hands at the date of the exercise of any such power shall be applied by it in making the following payments in the order set out:

10.1.1. in paying all costs (including the Trustee's remuneration), charges and expenses and satisfying every liability incurred by it in the execution of any of the trusts, powers and provisions contained in this deed;

10.1.2. in paying all other amounts due in terms of this deed, excluding the amount repayable on the debenture in accordance with clause 8;

10.1.3. in paying the amount repayable on the debenture in accordance with clause 8;

10.1.4. in paying to the Company any surplus of such monies:

provided that:

10.1.5. if there shall not remain sufficient monies to pay the amount referred to in clause 10.1.2 in full, the loss in respect thereof shall be borne by the debenture holders pro rata in proportion to the capital amounts owing to them;

10.1.6. the Trustee shall not be bound immediately to distribute any such monies among the debenture holders if the amount thereof is insufficient to enable it to make a distribution of at least ten cents in the Rand on the amount repayable on the debenture in accordance with clause 8.

10.2. All monies received by the Trustee and payable in accordance with clause 10.1 may, pending payment thereof in terms of clause 10.1, be placed by the Trustee on deposit in its name with any bank registered under the Banks Act, 1965, as amended, or any building society registered under the Mutual Building Societies Act, 1965, as amended, or under the Building Societies Act, 1986 or any statutes which may be substituted for those acts respectively. The income earned thereon shall be added to the monies available for payments in terms of clause 10.1.

11. POWERS OF TRUSTEE

11.1. The Trustee shall at all times have the following powers in addition to the powers conferred on it by law and elsewhere in this deed:

- 11.1.1. power to enforce the due performance by the Company of all the terms and conditions of this deed and to recover from the Company all monies due by it in respect of the debenture;
- 11.1.2. power to waive or condone (but so far only as in its opinion the interests of the debenture holders shall not be prejudiced hereby), on such terms and conditions as the Trustee may think fit, any breach by the Company of any of the conditions of this deed but subject to any prior directions given by special resolution of debenture holders precluding or limiting such waiver or condonation in respect of any particular type of breach or generally;
- 11.1.3. power to employ, as far as may reasonably be necessary, and to pay any attorney or any other person to transact any business or do any act of whatsoever nature required to be done pursuant to this deed, including the receipt and payment of money, and any payment made in terms of this sub-clause shall be refunded to the Trustee by the Company. Should the Trustee himself be an attorney or other person engaged in any profession or business, he may be so employed to act and shall be entitled to charge and be paid by the Company all professional or other charges for any business or act done by him or his firm in pursuance of this deed;
- 11.1.4. power to take and act upon any expert or professional advice;
- 11.1.5. generally, without imposing any obligation on the Trustee in that regard, power to make any payment, incur any disbursement or expense or to perform any act which the Company should have made, incurred or performed in the discharge of its obligations under the provisions of this deed (provided that such payment, disbursement, expense or act is not being disputed by the Company);
- 11.1.6. power to demand, claim, sue for and recover from the Company any monies, costs, charges or expenses (with interest thereon at the minimum bank overdraft rate charged at that time by Nedbank Limited as certified by any branch manager) paid or incurred by the Trustee in satisfying any liability incurred by it in the execution of any of the trusts, powers and provisions of this deed or in satisfying any obligation which the Company has failed to discharge in terms of this deed;
- 11.1.7. notwithstanding the provisions hereof, the Trustee shall be entitled, if it so deems fit, to convene a meeting of debenture holders to obtain from them a specific mandate in regard to anything which the Trustee might do or refrain from doing, whether or not such act is within the Trustee's discretion and the Company shall, if so required by the Trustee, convene such meeting at the Company's cost and expense.

11.2. The Company:

11.2.1. hereby appoints the Trustee with power of substitution to be its attorney and agent, irrevocably and "*in rem suam*" to do, on its behalf, all acts and things which, upon enforcement of the provisions of this deed, the Trustee is entitled to do on the Company's behalf in terms of this deed;

11.2.2. shall be liable for and shall pay to the Trustee on demand, any monies reasonably expended by the Trustee in the exercise of the powers granted to it under this deed, and all costs, charges, expenses and liabilities reasonably incurred by it in the execution of any of the trusts, powers and provisions contained in this deed, with interest thereon at the minimum bank overdraft rate charge at that time by Nedbank Limited from the date of expenditure to the date of repayment if such monies are not paid within twenty-one business days of the Trustee rendering an account therefore.

12. GENERAL PROVISIONS REGARDING TRUSTEE'S DISCRETIONS AND RESPONSIBILITIES

12.1. Subject to any provisions of this deed to the contrary, the Trustee shall have absolute discretion in the exercise or non-exercise of any trusts, powers and discretions vested in it and shall not (despite any provision of this deed to the contrary) be bound to act at the request of the debenture holders unless the persons requiring the Trustee, to act shall first have sufficiently indemnified it against and, insofar as the Trustee may reasonably require, provided it with funds to enable it to meet all costs, charges, expenses and liabilities likely to be incurred in complying with such request.

12.2. The Trustee shall not be responsible for any action which it may take pursuant to a resolution purporting to have been passed at a meeting of the debenture holders which it reasonably believes to have been properly and correctly passed even though it may afterwards appear that such resolution was for any reason whatsoever invalid.

13. INDULGENCE

The Company shall not be released from any of its obligations under this deed by reason of any indulgency extended to it by the Trustee or by the debenture holders for the payment of any sum of money then due or for the fulfilment of any other obligation by it, nor in respect of any act or deed of the Trustee in the exercise of any of the trusts, powers, authorities or discretions vested in the Trustee in the exercise of any of the trusts, powers, authorities or discretions vested in the Trustee by this deed or by anything the debenture holders or the Trustee may omit or neglect to do, whether by act or deed or howsoever, which, but for this provision, would operate to release or discharge the Company.

14. OBLIGATIONS OF THE COMPANY

The Company hereby undertakes in favour of the Trustee that it shall:

- 14.1. properly keep the books of account of its business transactions and operations;
- 14.2. forward to the Trustee and all debenture holders at the same time that they are forwarded to the equity shareholders of the Company, copies of the annual financial statements of the Company (including group annual financial statements, if any) and the interim reports of the Company;
- 14.3. execute and attend to all deeds, documents and things which the Trustee may reasonably require to enable the Trustee to carry out the trusts, powers and provisions contained in this deed;
- 14.4. provide the Trustee with such information or extracts, certified by the Company's auditors if so required by the Trustee, from the books, records and documents of the Company as may reasonably be required by the Trustee to carry out its duties, and any such certificate or extract shall be conclusive evidence of the information contained therein;
- 14.5. within twenty-one business days after the payment of any interest, furnish the Trustee with a certificate signed by the secretary or a director of the Company stating whether or not all interest payments due on the debentures have been duly made. The Trustee shall be entitled to accept the contents of such certificate as being correct without being obliged to verify the same;
- 14.6. shall conduct its affairs in a proper and businesslike manner and shall not, without the prior written consent of the Trustee:
 - 14.6.1. alienate the business of the Company or the whole or the greater part of the assets of the Company;
 - 14.6.2. modify, alter or vary any of the rights or restrictions attaching to the debentures and to the preference shares and the authorised share capital of the Company, if any;
- 14.7. shall notify the Trustee immediately, in writing, if any breach of any provision of this deed takes place.

15. TRUSTEE'S FEES

15.1. The Company shall pay the Trustee for the services to be rendered by it in terms of this deed a reasonable annual fee that shall be negotiated annually by the Trustee with the board of directors of the Company.

15.2. In addition to the aforementioned fees, the Company shall pay the Trustee:

15.2.1. for undertaking exceptional work not normally undertaken by Trustees;

15.2.2. all travelling and other expenses and disbursements of any nature which the Trustee may reasonably incur in carrying out his duties in terms hereof (notwithstanding the appointment of a liquidator or any judgment which the Trustee or one or more of the debenture holders may retain).

16. CESSATION OF OFFICE OF TRUSTEE AND APPOINTMENT OF NEW TRUSTEE

16.1. The Trustee shall remain in office until it ceases to hold office in terms of clause 16.2.

16.2. The Trustee shall cease to hold office if:

16.2.1. it resigns, having given at least sixty business days written notice to the Company in the manner prescribed in clause 19. Such resignation shall be effective without any leave of any Court or any other person. At the expiration of such period of notice the Trustee shall be discharged from the trusts hereof and shall not be responsible for any loss or costs occasioned by its resignation; or

16.2.2. it is wound up or placed under judicial management, whether provisionally or finally; or

16.2.3. it becomes disqualified in law to hold the office of Trustee; or

16.2.4. it is removed from office by a special resolution of debenture holders; or

16.2.5. being a natural person, his estate is provisionally or finally sequestrated or surrendered as insolvent or his person or property is placed under curatorship; or

16.2.6. it, being a natural person, attains the age of 70 years unless otherwise agreed to between the directors and the trustee at the time.

- 16.3. Upon the termination of office of a Trustee, the Company shall immediately nominate a new Trustee, which shall have been approved by a special resolution of debenture holders. In the event of the Company failing, within a reasonable time, to nominate a person approved by debenture holders, the debenture holders may themselves, by a special resolution of debenture holders, make such appointment.
- 16.4. Upon the appointment of a Trustee in place of a former Trustee, the new Trustee shall, in writing, signify its acceptance of the appointment and shall thereafter be vested with all the rights, powers, authorities and privileges and be subject to all the trusts and obligations set out in this deed, as if it had originally been appointed Trustee, other than any liability for breach of trust by any former Trustee.

17. TRUSTEE'S FIDUCIARY POSITION

The Trustee shall not, by reason of its fiduciary position, be precluded from making any contract or entering into any transaction with the Company in the ordinary course of the business of the Trustee or from acquiring or holding any of the debentures or other securities of the Company either directly or indirectly; provided however, that should any conflict of interest arise between the Trustee and the Company as a consequence of the foregoing, the Trustee shall take such steps as it deems appropriate to resolve such conflict to the extent which it deems the same to be inconsistent with its duties as Trustee.

18. INDEMNITY

Subject to the provisions of Section 123 of the Act, the Company indemnifies the Trustee and any officer, employee or representative of the Trustee against all proceedings, claims, costs or demands of any nature whatever in respect of anything done or not done in terms of this deed, including, but not limited to, any liability arising out of any mistake or error of judgment of the Trustee or any such other person, provided that:

- 18.1. the Trustee and such other person shall not be indemnified against any liability arising out of breach of trust if the Trustee fails to exercise that degree of care and diligence required of him as Trustee, having regard to the provisions of this deed; but
- 18.2. the Trustee and such other person may be released from any liability contemplated in clause 18.1, either in respect of specific acts or omissions or on the Trustee ceasing to act, by a special resolution of debenture holders.

19. DOMICILIUM AND NOTICES

19.1. The Company and the Trustee respectively choose *domicilium citandi et executandi* for all notices in terms of this deed as follows:

19.1.1. the Company at 5 Forest Mews, Forest Drive, Pinelands, 7405;

19.1.2. the Trustee at 3rd Floor Sanclare Building, 21 Dreyer Street, Claremont, 7700;

19.1.3. the Company and Trustee shall each be entitled to change its *domicilium* referred to above to any other address in the Republic of South Africa on giving written notice to that effect to the other of them.

19.2. Each notice given in terms of this deed by the Company to the Trustee, or vice versa:

19.2.1. if addressed to:

19.2.1.1. the Company shall be marked "For the attention of the Secretary of the Company";

19.2.1.2. the Trustee shall be marked "For the attention of the Trustee of Foord Compass Limited";

19.2.2. shall be sent in an envelope which is similarly marked;

19.2.3. shall be sent by prepaid registered post addressed to the domicile referred to in clause 19.1;

19.2.4. shall be deemed, unless the contrary is proved, to have been received seven business days after the day on which it is posted.

19.3. Any notice required to be given in terms of this deed to any debenture holder:

19.3.1. shall be given at the debenture holder's address as shown in the register;

19.3.2. in the case of joint holders, shall be notice to all those joint holders if the notice is given to the debenture holder whose name stands first in the register;

19.3.3. shall be given by posting it by ordinary mail to that debenture holder;

- 19.3.4. shall be deemed (unless the contrary is proved) to have been received by that debenture holder to whom it is addressed as his address in the register, to have been received seven business days after the day on which it is posted.
- 19.4. In proving the giving of any notice in terms of this deed, it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and sent by the appropriate method of posting.
- 19.5. Copies of notices which all debenture holders are entitled to receive from the Company or the Trustee shall, if the debenture is listed on the JSE, be given simultaneously to The General Manager, Issuer Services, of the JSE in the appropriate quantity.

20. MEETINGS AND POWERS OF DEBENTURE HOLDERS

20.1. Convening of meetings

- 20.1.1. The Trustee or the Company may at any time convene a meeting of the debenture holders ("a meeting" or "the meeting").
- 20.1.2. The Trustee shall convene a meeting upon the requisition in writing of the holders of at least $\frac{1}{10}$ (one-tenth) of the debentures for the time being outstanding and upon being indemnified, to his satisfaction, against all costs and expenses thereby occasioned and being given notice, in the manner prescribed in this deed, of the nature of the business for which the meeting is to be held.
- 20.1.3. Whenever the Company desires to convene a meeting, it shall give notice in writing to the debenture holders and the Trustee, in the manner prescribed in this deed, of the place, day and hour thereof, the nature of the business to be transacted thereat and the wording of each resolution to be proposed.
- 20.1.4. Whenever the Trustee desires to convene a meeting he shall give notice in writing to the debenture holders and the Company, in the manner prescribed in this deed, of the place, day and hour thereof, the nature of the business to be transacted thereat and the wording of each resolution to be proposed.
- 20.1.5. All meetings of debenture holders shall be held at the registered office of the Company or should this be impractical a venue in the same town as selected by the Trustee.

20.2. Requisition

- 20.2.1. A requisition notice referred to in clause 20.1.2 shall state the nature of the business for which the meeting is to be held and shall be deposited at the office of the Trustee.
- 20.2.2. The Trustee shall notify the Company of the deposit of a requisition notice forthwith.
- 20.2.3. A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

20.3. Convening of meetings by requisitionists

- 20.3.1. If the Trustee does not proceed to cause a meeting to be held within 30 (thirty) business days of the deposit of a requisition notice, the requisitionists, or a majority of them, or such of their number as together hold not less than 1/10 (one-tenth) of the debentures for the time being outstanding, may themselves convene the meeting, but the meeting so convened shall be held within 60 (sixty) business days from the date of such deposit and shall be convened as nearly as possible in the same manner as that in which meetings may be convened by the Trustee. Notice of the meeting shall be required to be given to the Company and the Trustee in the manner prescribed in this deed.

20.4. Notice of meeting

- 20.4.1. Unless the holders of at least 75% (seventy five per cent) of the debentures for the time being outstanding agree in writing to a shorter period, at least 21 (twenty one) days' written notice specifying the place, day and time of the meeting and the nature of the business for which the meeting is to be held shall be given by the Trustee or the Company, as the case may be, to each debenture holder and to the Company or Trustee, as the case may be, in the manner prescribed in this deed.
- 20.4.2. The accidental omission to give such notice to any debenture holder or the non-receipt of any such notice, shall not invalidate the proceedings at a meeting.
- 20.4.3. If the debentures are listed on the JSE, notices of general meetings shall be sent to the JSE at the same time as notices are sent to debenture holders.

20.5. Quorum

20.5.1. A quorum at a meeting shall:

20.5.1.1. for the purposes of considering an ordinary resolution, consist of debenture holders present in person or by proxy and holding in the aggregate not less than 1/10 (one-tenth) in value of the debentures then outstanding;

20.5.1.2. for the purposes of considering a special resolution of debenture holders:

20.5.1.2.1. if the debentures are listed on the JSE, consist of debenture holders present in person or by proxy and holding in the aggregate not less than a majority in the value of the whole of the outstanding debentures then in issue or such other majority as may be prescribed by the regulations of the JSE, from time to time;

20.5.1.2.2. subject to clause 20.5.1.2.1, consist of debenture holders present in person or by proxy and holding in the aggregate not less than 25% (twenty five per cent) of the debentures then in issue.

20.5.2. No business shall be transacted at a meeting of debenture holders unless a quorum is present at the time when the meeting proceeds to business and is present throughout the meeting.

20.5.3. If, within 30 (thirty) minutes from the time appointed for the meeting, a quorum is not present, the meeting shall, if it was convened on the requisition of debenture holders, be dissolved. In every other case the meeting shall stand adjourned to a date as determined in clause 20.8.3 of this deed. If at such adjourned meeting a quorum is not present, the debenture holders present in person or by proxy shall constitute a quorum for the purpose of considering any resolution, including a special resolution of debenture holders.

20.6. Chairperson

20.6.1. The Trustee or his representative shall preside as chairperson at a meeting. If the Trustee or his representative is not present within 10 (ten) minutes of the time appointed for the holding of the meeting, the debenture holders then present shall choose one of their own number to preside as chairperson.

20.7. Right of the company at meetings

20.7.1. Every director, the secretary of and the attorney to the Company and every other person authorised in writing by the Company, may attend and speak at a meeting of debenture holders.

20.8. Adjournment

20.8.1. Subject to the provisions of clause 20.5 of this deed, the chairperson may, with the consent of, and shall on the direction of the meeting, adjourn the meeting from time to time and from place to place.

20.8.2. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

20.8.3. An adjourned meeting shall be reconvened not less than 14 (fourteen) days nor more than 30 (thirty) days from the date of the meeting which was adjourned, to a day which is a business day. The adjourned meeting shall be held at the same time of day and place as the meeting which was adjourned, unless such time or place is not appropriate.

20.8.4. At least 14 (fourteen) days' written notice of the place, day and time of an adjourned meeting contemplated in this clause 20 shall be given by the Company or the Trustee, as the case may be, to each debenture holder and the Company or the Trustee, as the case may be, in the manner prescribed in this deed. The notice shall state that if the quorum required in terms of clause 20.5.1 of this deed is not present at the adjourned meeting, the debenture holders then present shall form a quorum.

20.9. How matters are decided

20.9.1. At a meeting, a resolution put to the vote shall be decided on a show of hands unless before or on the declaration of the result of the show of hands, a poll is demanded by the chairperson or by any one or more of the debenture holders present in person or by proxy or, being a company or other body corporate, by its duly authorised representative and entitled in the aggregate to not less than 10% (ten per cent) of the total votes of all debenture holders entitled to be present and vote at the meeting.

20.9.2. Unless a poll is demanded, a declaration by the chairperson that on a show of hands a resolution has been carried, or carried by a particular majority, or lost, shall be conclusive evidence of that fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

20.9.3. A poll demanded on the election of a chairperson or on the question of the adjournment of a meeting shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting.

20.9.4. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson shall be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

20.10. Votes

20.10.1. On a show of hands, any person present and entitled to vote as a debenture holder or as a proxy shall have only 1 (one) vote, irrespective of the number of debentures he holds or represents. On a poll, every debenture holder present in person or by proxy, shall have 1 (one) vote for each debenture of which he is the registered holder or representative. The joint debenture holders shall have only one vote on a show of hands and one vote on a poll for each debenture of which they are the registered holder and the vote may be exercised only by that holder present whose name appears first on the register in the event that more than one of such joint holders is present at the meeting in person or by proxy. No vote may be exercised in respect of debentures beneficially held by the Company.

20.11. Proxies

20.11.1. A proxy shall be authorised in writing under any usual common form of proxy or by power of attorney under the hand of the appointer or of his authorised agent and, if the appointer is a company, other body corporate or association, signed by its authorised officer or agent.

20.11.2. A person appointed to act as proxy need not be a debenture holder.

20.11.3. The proxy form or power of attorney shall be deposited at the registered office of the Company or at the office where the register is kept not less than 48 (forty eight) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy or power of attorney proposes to vote, and in default, the proxy or power of attorney shall be invalid.

- 20.11.4. No proxy form or power of attorney shall be valid after the expiration of 12 (twelve) months from the date named in it as the date of its execution.
- 20.11.5. A proxy shall be deemed to have the right to demand or join in demanding a poll.
- 20.11.6. A proxy form shall be valid for any adjournment of a meeting, unless the contrary is stated thereon.
- 20.11.7. A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of debentures in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity or revocation shall have been received by the Company at the office of its transfer secretaries more than, and that the transfer has been given effect to by the Company less than, 30 (thirty) minutes before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 20.12. Minutes
- 20.12.1. The Trustee shall cause minutes of all resolutions and proceedings of meetings to be duly entered in books to be provided by the Company for that purpose.
- 20.12.2. Any such minutes as aforesaid, if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings held or by the chairperson of the next succeeding meeting, shall be receivable in evidence without any further proof, and until the contrary is proved, a meeting of debenture holders in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.
- 20.13. A resolution duly passed at a meeting duly convened and held in accordance with the provisions of this deed, shall be binding upon the debenture holders, the Company and the Trustee.
- 20.14. The debenture holders shall, in addition to the powers given elsewhere in this deed and without derogating from the powers conferred on the Trustee by this deed, have the following powers which may only be exercised by special resolution of debenture holders:
- 20.14.1. to bind the debenture holders to any compromise or arrangement to be made between the Company and the debenture holders or any of them;

- 20.14.2. to agree to any variation or modification of any of the rights of the debenture holders, in each case subject to the consent or concurrence of the Company; and
- 20.14.3. subject to Section 123 of the Act, to discharge or exonerate the Trustee from liability in respect of any specific breach of trust.

21. AMENDMENT

Subject to clause 21.3, the terms of this deed may be amended:

21.1. by the Trustee and the Company acting together in order to:

- 21.1.1. rectify any manifest or typographical error;
- 21.1.2. make such amendments or additions as may be reasonably required by the JSE which do not, in the opinion of the Trustee, adversely affect the rights of debenture holders;

21.2. subject to the prior written consent of the Company, with:

- 21.2.1. the consent in writing of the debenture holders holding not less than 75% in number of the debentures outstanding from time to time, provided that no such amendment shall be of any force or effect unless notice of the intention to make such amendment shall have been given to all debenture holders in the manner prescribed in clause 19; or
- 21.2.2. the sanction of a special resolution of debenture holders; but not otherwise.

21.3. If the debenture is listed on the JSE, any amendment of this deed shall be subject to the prior approval of the JSE and, where applicable, to debenture holders.

22. COSTS

The Company shall pay all costs and charges (including stamp duty) of and incidental to the preparation and implementation of this deed, and all other charges reasonably and necessarily incurred in regard to the creation and issue of the debenture.

23. ARBITRATION

23.1. In the event of any difference, dispute or deadlock arising at any time between the Company and the Trustee in regard to any matters referred to in, arising from or in connection with this deed or, without limiting the generality aforesaid, any breach thereof or its validity, or the legal interpretation to be applied thereto, then either the Company or the Trustee shall have the right to demand that such difference, dispute or deadlock be submitted to and determined by arbitration in accordance with the following provisions:

23.1.1. there shall be one arbitrator who shall be agreed upon between the Company and the Trustee; failing agreement within five business days of the arbitration being demanded, either the Company or the Trustee shall be entitled to require the appointment of an arbitrator by the Chairman for the time being of the Cape Town Bar Council who, in making his appointment, shall have regard to the nature of the dispute in question;

23.1.2. the arbitration shall be conducted according to such procedure as shall be laid down by the arbitrator, provided that:

23.1.2.1. such procedure shall be designed to have the result (if practical) that the arbitration be completed within twenty-one business days after it shall have been demanded;

23.1.2.2. the arbitration shall be conducted in a summary manner;

23.1.2.3. the arbitrator shall be entitled to dispense with the rules of procedure and discovery, to the extent that he deems this necessary so as not to delay the expeditious conclusion of the proceedings, but he shall observe the rules of evidence.

23.2. The decision of the arbitrator shall be final and binding on the Company and the Trustee and shall be carried into effect. The arbitrator's award may be made an order of any court of competent jurisdiction.

23.3. This clause 23 shall be severable from the rest of this deed and remain effective even if this deed is cancelled or terminated.

24. MISCELLANEOUS

24.1. The Trustee hereby accepts appointment as such on the terms and conditions contained herein.

24.2. The Company is herein represented by MARK OWEN HODGES, a director, who warrants that he is duly authorised hereto under and by virtue of a resolution passed by its directors.

25. AMENDMENT OF BORROWING POWERS OF THE COMPANY

The Company shall not, without the prior sanction of a special resolution of debenture holders, amend the provisions of its articles of association in relation to the borrowing powers of the Company exercisable by the directors.

SIGNED AND WITNESSED by the parties on the following dates and at the following places respectively:

At PINELANDS on 5 May 2009

Mark Owen Hodges
For and on behalf of Foord Compass Limited

John Adrian Levin
Trustee

As Witnesses:

1. _____

1. _____

2. _____

2. _____