

LOAN AGREEMENT

dated

AUGUST 16, 2022

between

NEO PERFORMANCE MATERIALS INC.

and

EXPORT DEVELOPMENT CANADA

USD 75,000,000

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EXHIBIT "A"	REQUEST FOR LOAN
EXHIBIT "B"	SECURITY DOCUMENT(S)
EXHIBIT "C"	ENVIRONMENTAL AND SOCIAL ACTION PLAN
EXHIBIT "D"	DISCLOSED LITIGATION

This LOAN AGREEMENT dated as of August 16, 2022, made between Neo Performance Materials Inc. (the "Borrower"), the Guarantors (as defined below) and Export Development Canada ("EDC").

The Borrower has requested EDC to make loans to the Borrower to assist in financing the NAMCO Project, and EDC is prepared to make such loans on and subject to the terms and conditions hereof, and accordingly the parties agree as follows:

## SECTION 1 – DEFINITIONS

1.1 Defined Terms. For the purposes of this Agreement, capitalized words and phrases shall have the meanings set forth in Schedule 1.1 (*Defined Terms*) hereto and Schedule 1.2 (*Accounting Terms and Conditions*) hereto.

1.2 Accounting Principles. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Agreement or any other Transaction Document, such determination or calculation will, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with GAAP.

All calculations for the purposes of determining compliance with the financial ratios and financial covenants contained in this Agreement will be made on a basis consistent with GAAP as it exists on the date of this Agreement and used in the preparation of the consolidated financial statements of the Borrower for its Fiscal Year ended December 31. In the event of a change in such GAAP, the Borrower and EDC will negotiate in good faith to revise (if appropriate) such ratios and covenants to reflect GAAP as then in effect.

1.3 Terms Generally. Words importing the singular number include the plural and vice versa. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All forms of "include" shall be deemed to be followed by the phrase "without limitation". The word "will" shall have the same meaning and effect as "shall". Unless the context requires otherwise:

(a) reference to any agreement or other document herein shall be construed as referring to such agreement or other document as from time to time amended (subject to any restrictions on such amendment set forth herein);

(b) reference to any Person shall be construed to include such Person's successors and assigns;

(c) "herein", "hereof" and "hereunder", and similar words shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; and

(d) all references to sections, schedules and exhibits shall be construed to refer to sections of, schedules to and exhibits to this Agreement, and all such schedules and exhibits shall form part of this Agreement.

## **SECTION 2 – LOANS, RECORDS AND DISBURSEMENTS**

2.1 Loans. EDC agrees, on the terms and subject to the conditions of this Agreement, to make one or more Loans to or for the account of the Borrower during the Commitment Period for the purpose of financing the NAMCO Project, in USD in an aggregate amount up to but not exceeding the Commitment. Each Loan shall be advanced on a Business Day.

2.2 Borrowing.

(a) EDC shall make advances to the Borrower as specified in each particular Request for Loan (each such advance made under this Agreement, shall constitute a "Loan"). There shall be no more than one (1) advance with respect to each Tranche made hereunder unless otherwise agreed to by EDC and the Borrower.

(b) The Borrower shall provide EDC with a Request for Loan including setting out the Applicable Tenor, not later than 11:00 a.m., New York City time, at least three (3) Business Days before the date of the proposed Borrowing, unless otherwise agreed to in advance by EDC.

(c) EDC shall, subject to the satisfaction of the terms of this Agreement, make available a Loan in the amount so requested, provided that from the proceeds of any Loan, EDC will be entitled to retain such fees or other amounts due hereunder and unpaid by the Borrower on the date that the Loan is made. Notwithstanding any such retention of fees or other amounts owing to EDC, the Borrower will be deemed in each case to have received a Loan in the amount requested by the Borrower.

2.3 Disclaimer. Reserved.

## **SECTION 3 – REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST AND FEES**

3.1 Principal. The Borrower will repay to EDC the full principal amount of each outstanding Loan as follows each year on the anniversary of the date of this Agreement:

- Payment 1 (2023) – No principal repayment;
- Payment 2 (2024) – 10% of the Borrowed Loan;
- Payment 3 (2025) – 10% of the Borrowed Loan;
- Payment 4 (2026) – 10% of the Borrowed Loan;
- Payment 5 (Maturity Date) – all remaining amount necessary to repay the Loan in full, including all payable principal, interests, fees and expenses. (70% of Borrowed Loan).

Each installment will be in each amount set out in the repayment Schedule set out in Schedule 3.1 hereto.

### 3.2 Interest.

(a) Subject to section 3.2(b), the Borrower will pay to EDC on each Interest Payment Date interest on the unpaid principal amount of each Loan for the period from the Borrowing Date to but excluding the date such Loan is paid in full at a rate per annum equal to the SOFR Rate for each Interest Period plus the Applicable Margin.

(b) If a Loan is made within thirty (30) days prior to an Interest Payment Date, interest thereon that has accrued from the Borrowing Date shall be paid on the second occurring Interest Payment Date following the Borrowing Date.

3.3 Default Interest. Notwithstanding the foregoing and subject to applicable law, if the Borrower fails to pay any amount due and payable hereunder, subject to any applicable cure periods, the Borrower will pay to EDC, on written demand (which, for clarity, shall include delivery of an invoice by EDC), interest on such amount at the applicable Post-Default Rate, for the period from the due date thereof to but excluding the date such overdue amount is paid in full, compounded on each Interest Payment Date, both before and after judgment. In the case of any enforcement of this Section 3.3 against any entity registered in Thailand, if any interest is not paid when due and the unpaid interest amount remains outstanding for not less than one year, such unpaid interest amount shall be added to the overdue amount on the date falling one year after its due date and such amount will bear interest at the rate specified under this Section 3.3.

3.4 Interest and Fee Determinations. Each determination of a rate of interest or fee by EDC will be conclusive evidence of such rate or fee in the absence of manifest error. Interest and fees will be calculated on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) elapsed in the period for which such interest or fees are payable. For the purposes of disclosure pursuant to the *Interest Act* (Canada) and not for any other purpose, where in this Agreement, a rate of interest is to be calculated on the basis of a year of 360 days, the yearly rate of interest to which the 360 day rate is equivalent is such rate multiplied by the number of days in the year for which such calculation is made and divided by 360.

3.5 Maximum Interest and Fee Determinations Notwithstanding anything contained herein to the contrary, the Borrower will not be obliged to make any payment of interest or other amounts payable to EDC hereunder in excess of the amount or rate that would result in the receipt by EDC of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)). If the making of any payment by the Borrower would result in a payment being made that is in excess of such amount or rate, EDC will determine the payment or payments that are to be reduced or refunded, as the case may be, so that such result does not occur. Notwithstanding the foregoing, in the case of any entity registered in Thailand, such entity will not be obliged to make any payment of interest or other amounts payable to EDC regarded as additional interest in excess of 20% per annum.

3.6 Voluntary Prepayment. The Borrower may, when not in default hereunder, prepay the Loans, in whole or from time to time in part, subject to the following conditions:

(a) each partial prepayment will be in an amount equal to or greater than USD 1,000,000 or a whole multiple thereof, provided that the prepayment amount is not equivalent to the total outstanding amount of the Loans, in which case there shall not apply any minimum;

(b) the Borrower shall pay interest that has accrued on the principal amount being prepaid to the date of prepayment as well as all other amounts due and payable on the date of prepayment in respect of such principal amount being prepaid;

(c) the Borrower shall give thirty (30) days' notice to EDC of its intention to make a prepayment in accordance with section 4.1(c) (*Notices*), whereupon such partial prepayment shall be due and payable on the date specified in such notice;

(d) if such prepayment is made on a day other than an Interest Payment Date, the Borrower shall also pay breakage costs as provided for in section 5.4 (*Broken Funding*);

(e) partial prepayments will be applied to outstanding installments in inverse order of maturity; and

(f) any amount that is prepaid may not be re-borrowed.

3.7 Mandatory Prepayments. The Borrower shall prepay the Loans, in whole or in part as may be required, as follows:

(a) *Termination of NAMCO Project*. If the NAMCO Project is terminated by the Borrower before completion, then on the next Interest Payment Date following such event the Borrower will prepay to EDC the outstanding principal amount of the Loans, accrued interest and all other charges payable hereunder. The Borrower will also pay to EDC an additional amount equal to thirty (30) days interest on the outstanding principal amount of the Loans calculated at the rate per annum set out in section 3.2 (*Interest*).

(b) *Sales of Assets*. Upon receipt of the proceeds of the sale or other disposition of any of the Borrower's Consolidated Assets in excess of USD 3,000,000 per fiscal year of non-ordinary course permitted asset sales, or if any of the Collateral is damaged, destroyed or taken by condemnation or expropriated in whole or in part, the Borrower shall make a prepayment in the amount of the proceeds thereof, net insurance proceeds other than net proceeds that are reinvested in the business of the Borrower within 180 days and a minimum threshold of USD 3,000,000, against the remaining installments of principal on all Loans.

(c) *Excess Cash Flow*. Reserved.

(d) *Insurance*. as required by Section 8.5 of this Agreement.

(e) *Distributions*. as required by Section 8.7(c) of this Agreement.

(f) *Event of Default*. as required by Section 9.2 of this Agreement.

(g) *General*. as otherwise specifically required under this Agreement.

If such mandatory prepayment is made on a day other than an Interest Payment Date, the Borrower shall also pay breakage costs as provided for in section 5.4 (*Broken Funding*). Partial mandatory prepayments will be applied to outstanding installments in inverse order of maturity and then against any other amounts due hereunder, as determined by EDC, in its sole discretion. Any amount that is prepaid may not be re-borrowed.

3.8 Exposure Fees. Reserved.

3.9 Administration Fee. The Borrower will pay to EDC on or before the earlier of:

(a) thirty (30) days after the date of this Agreement; and

(b) the date of the initial Loan hereunder, a non-refundable administration fee in an amount equal to USD [REDACTED] of the Commitment. **Redacted – sensitive information**

3.10 Commitment Fee. The Borrower will pay to EDC a commitment fee, payable in arrears on the last Business Day of each calendar quarter ("Commitment Fee Payment Date"), on the daily portion of the Commitment during such period, calculated at a rate of [REDACTED]% per annum. **Redacted – sensitive information** Notwithstanding the foregoing, Commitment Fees will be calculated initially based on the unadvanced portion of the Commitment that remains unadvanced on the thirtieth (30<sup>th</sup>) day prior to the last Business Day of the relevant calendar quarter, and EDC will adjust for any underpayment or overpayment, as the case may be, on the next following Commitment Fee Payment Date.

3.11 Application of Payment.

(a) All payments made by the Borrower under this Agreement will be applied first to all amounts then due and payable other than principal and interest in such order as EDC may elect, then to interest due and payable, then to principal due and payable, and lastly to installments of principal not yet due in inverse order of maturity.

(b) All amounts received by EDC pursuant to the Security Documents will be applied to the Indebtedness of the Borrower to EDC in such order of priority as EDC determines in its sole discretion. For the purpose of this section and where applicable, EDC will convert any amounts received in currencies other than USD into USD at the spot rate at which EDC may, in accordance with normal practice, purchase USD with such other currency on the date of each application of payments pursuant to this section. Any surplus remaining after the Indebtedness of the Borrower to EDC hereunder has been satisfied in full shall be paid to the Borrower by EDC in accordance with applicable law.

## SECTION 4 – PAYMENT GENERALLY

4.1 Place and Manner of Payment.

(a) All amounts payable by the Borrower hereunder shall be paid to EDC in USD, in immediately available funds, without set-off or counterclaim not later than 11:00 a. m. (New York City time) on the day such payment is due and to the credit of such account or financial

institution as EDC may from time to time notify the Borrower in writing prior to any payout being due. Any payments received after 11:00 a. m. (New York City time) will be considered for all purposes as having been made on the next following Business Day.

(b) *Non-Business Days.* If the due date of any payment under this Agreement would otherwise fall on a day that is not a Business Day, such payment shall be due on the next succeeding Business Day, together with interest that has accrued to the date of payment.

(c) *Notices.* Each Request for Loan and each notice of optional prepayment is irrevocable and shall be effective only if received by EDC by 11:00 a.m. New York City time on the date that is three (3) Business Days prior to the proposed Borrowing Date or thirty (30) days prior to the proposed date of prepayment, as the case may be. In respect of each Loan, the request for Loan shall be in the form of Exhibit "A – Part I", and any notice of optional prepayment shall specify the amount to be prepaid and the date of prepayment.

(d) *Loan Accounts.* EDC will maintain in accordance with its usual practice one or more accounts evidencing the Indebtedness of the Borrower to EDC hereunder. Such account(s) will be prima facie evidence of the obligations recorded therein, absent manifest error, provided that any failure by EDC to maintain any account or any error therein shall not affect the obligation of the Borrower to repay its Indebtedness to EDC in accordance with this Agreement.

## **SECTION 5 – YIELD PROTECTION AND OTHER PROVISIONS**

5.1 Additional Costs. If on or after the date hereof a law or regulation is enacted or changed, or the interpretation or administration thereof is changed by any Governmental Authority, or in the event that a judgment is rendered and the result of any of the foregoing is to impose or modify any reserve or similar requirements against assets held by, or deposits in or for the account of, or loans by, EDC, or to impose on EDC any other condition with respect to this Agreement with the result that the cost to EDC of making or maintaining Loans is increased or the amount receivable by EDC in respect of Loans is reduced (other than Taxes, which shall be treated in accordance with section 5.5 (*Taxes*)), the Borrower will pay to EDC on demand such additional amount or amounts as will compensate EDC for such additional cost or reduction suffered (such increase or reduction, the "Increased Costs"). A certificate provided by EDC setting forth the amount of such Increased Costs and including reasonable detail of the basis for such Increased Costs will be conclusive evidence of such amount, absent manifest error. The Borrower will pay EDC the amount shown as due on any such certificate within ten (10) days after receipt thereof.

5.2 Changes in Market. Notwithstanding any other provision of this Agreement, if EDC reasonably determines (which determination shall be conclusive and binding on the Borrower absent manifest error):

(a) that on or prior to the determination of the SOFR Rate for any Interest Period, adequate and reasonable means do not exist for determining the Adjusted Term SOFR for such Interest Period; or

(b) a fundamental change has occurred in the foreign exchange or interbank markets with respect to a Currency (including changes in national or international financial, political or economic conditions or currency exchange rates or exchange controls); or

(c) the Adjusted Term SOFR for such Interest Period will not reflect the cost to EDC of making or maintaining Loans for such Interest Period;

then EDC will promptly so notify the Borrower in writing and the Borrower will agree in writing, within sixty (60) days after giving such notice, to the terms of a substitute basis for continuing the Loans hereunder, including the basis and manner for calculating interest thereon, which terms will be retroactive to the beginning of the Interest Period for which the SOFR Rate was to be determined. The provisions of this Agreement will be amended to accord with such terms and the Borrower agrees to execute any documents or instruments requested by EDC to reflect such amendment.

5.3 Illegality. Notwithstanding any other provision of this Agreement, if, in the reasonable opinion of EDC, it is or becomes unlawful for EDC under the laws of any jurisdiction to make or maintain Loans or otherwise perform any of its obligations under this Agreement, including without limitation, any illegality due to any economic or financial sanctions administered or enforced by any Sanctions Authority or if EDC is advised in writing by a Sanctions Authority that penalties will be imposed by a Sanctions Authority as a result of the Loan or any other business or financial relationship with the Borrower or its Subsidiaries, then EDC will promptly so notify the Borrower and (x) EDC will have no further obligation to make any further Loan; and (y) the Borrower will promptly prepay the Loans in full together with accrued interest thereon and all other amounts then due.

5.4 Broken Funding. The Borrower will indemnify and hold harmless EDC against any loss, costs, damage, liability or expense which EDC certifies as sustained or incurred by EDC as a consequence of:

(a) any default in repayment of principal or payment of interest or any other amount due hereunder;

(b) the delay or failure of the Borrower to make payment of or in respect of any Taxes;

(c) any prepayment of principal being made on other than an Interest Payment Date;

(d) the failure of the Borrower to borrow for any reason (including the failure to satisfy any conditions precedent specified in Section 6 (*Conditions Precedents*) following submission of a Request for Loan; or

(e) the occurrence of a Default; including, in any such case, but not limited to, any loss, cost, damage, liability or expense sustained or incurred by EDC in liquidating or re-employing deposits or other funds acquired or maintained or to be acquired to make any Loan or maintain or continue any Loan or any part thereof. For purposes of calculating amounts payable by the Borrower pursuant to this section 5.4, EDC shall be deemed to have funded each Loan by

a matching deposit or other borrowing in the relevant market for a comparable amount and for a comparable period, whether or not the relevant Loan was in fact so funded.

5.5 Taxes.

(a) All payments of principal, interest and other amounts due by the Borrower to EDC under this Agreement shall be made free and clear of and without deduction for or on account of any Taxes.

(b) The Borrower will pay or cause to be paid all Taxes now or in the future levied in respect of this Agreement or any other Transaction Document or any payment made hereunder or thereunder.

(c) If the Borrower is prevented by operation of law or otherwise from making or causing to be made any payment hereunder without deduction for or on account of any Taxes, the amount of such payment shall be increased by such amount as may be necessary so that EDC receives the full amount it would have received had such payment been made without such deduction.

(d) If subsection (c) above applies and EDC so requires the Borrower shall deliver to EDC evidence satisfactory to EDC, in its sole discretion, of the payment to the relevant taxation authority or other authority of the full amount deducted or withheld.

(e) The Borrower shall pay all stamp duty, registration and other similar Taxes payable in respect of any Transaction Document that may be required under the relevant jurisdictions, including, but not limited to, in Thailand.

5.6 Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

(a) *Benchmark Replacement.* Upon the occurrence of a Benchmark Transition Event, EDC and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after EDC has provided notice in writing of such proposed amendment to the Borrower. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 5.6(a) will occur prior to the applicable Benchmark Transition Start Date.

(b) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, EDC will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) *Notice; Standards for Decisions and Determinations.* EDC will promptly notify the Borrower in writing of (i) the implementation of any Benchmark Replacement and (ii) the

effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. EDC will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to this Section 5.6. Any determination, decision or election that may be made by EDC pursuant to this Section 5.6, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 5.6.

(d) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by EDC in its reasonable discretion or (B) the administration of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then EDC may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then EDC may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) *Benchmark Unavailability Period.* Upon the Borrower's receipt of written notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Loan during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Loan of US Base Rate. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of US Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of US Base Rate.

## **SECTION 6 – CONDITIONS PRECEDENT**

6.1 Conditions Precedent to the Initial Loan. EDC will have no obligation to make the initial Loan until each of the following documents or evidence of satisfaction of the following matters, as the case may be, shall have been delivered to EDC, all in form and substance satisfactory to EDC:

- (a) *Agreement.* A duly executed copy of this Agreement.
- (b) *Guarantees.* A Guarantee in the form and content satisfactory of EDC from each existing Material Subsidiary except that no guarantee shall be required from Magnequench (Korat) Co., Ltd. which shall be subsequently provided pursuant to Section 8.1(s)
- (c) *Security Documents.* Duly executed copies of each Security Document and evidence that all such Security Documents and related instruments have been recorded and filed in all jurisdictions wherein such recording or filing is necessary to create and perfect the interests of EDC in the Collateral subject thereto and that all applicable recording and stamp taxes have been paid in full.
- (d) *Search Report.* A copy of the Search Report.
- (e) *Opinions of Counsel.*
  - (i) An opinion, dated on or about the date of the initial Loan, of counsel to the Transaction Parties with respect to each Transaction Party covering such matters as EDC may reasonably request, including corporate, no conflict, registration, enforceability and foreign law opinions;
  - (ii) An opinion, dated on or about the date of the initial Loan, of counsel to EDC with respect to each Transaction Party covering such matters as EDC may reasonably request;
- (f) *Corporate Documents.* A certified copy of the constitutive documents of each Transaction Party, director list, shareholder register (other than in respect of the Borrower) and of resolutions of the board of directors, shareholders, or their respective meetings (as applicable) of each Transaction Party approving the terms of, and the transactions contemplated by each Transaction Document to which it is a party and resolving that it shall execute, deliver and perform the Transaction Documents to which it is a party, as well as all other certificates and documents such as EDC may require authorizing the Transactions, including, but not limited to:
  - (i) in the case of Neo Chemicals & Oxides (Europe) Ltd.
    - (A) resolutions of the Board of Directors:
      - (1) approving the terms of, and the transactions contemplated by the Transaction Documents to which it is a party and resolving that it executes, delivers and performs the Transaction Documents to which it is a party;
      - (2) authorizing a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and
      - (3) authorizing a specified person or persons, on its behalf, to sign and/or dispatch all documents and notices to be signed

and/or dispatched by it under or in connection with the Transaction Documents to which it is a party);

- (B) resolutions signed by all the holders of the issued shares in Neo Chemicals & Oxides (Europe) Ltd. approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party; and
- (C) certificates such as EDC may require authorizing the Transactions (and, in the case of Neo Chemicals & Oxides (Europe) Ltd., a certificate signed by an authorized signatory and:
  - (1) certifying that each copy document relating to it specified in this Section 6.1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; and
  - (2) confirming that guaranteeing the Guaranteed Indebtedness (as defined in the Guarantee granted by Neo Chemicals & Oxides (Europe) Ltd.) would not cause any guaranteeing or similar limit binding on it to be exceeded).

(ii) In the case of Neo Performance Materials (Singapore) Pte. Ltd.

- (A) a certificate of the directors of Neo Performance Materials (Singapore) Pte. Ltd. certifying the following: (i) the names of the person(s) who have authority to execute the Transaction Documents on behalf of Neo Performance Materials (Singapore) Pte. Ltd.; (ii) a specimen of the signature of the person(s) authorized to execute the Transaction Documents on behalf of Neo Performance Materials (Singapore) Pte. Ltd.; (iii) each copy document relating to it under this section is correct, complete and in full force as at a date no earlier than the date of this Agreement; (iv) any obligations under the Transaction Documents would not cause any guarantee or similar limit binding on the Transaction Parties to be exceeded; and (iv) each Transaction Party is solvent as at the date of this Agreement.

(g) *Incumbency Certificate.* A certificate of a duly authorized signing officer of each Transaction Party as to the authority, incumbency and specimen signatures of the persons who have executed or will execute the Transaction Documents and any other documents on behalf of each Transaction Party (and EDC shall be entitled to rely on such certificate until EDC's receipt of notification in writing to the contrary) or, in the case of Neo Chemicals & Oxides (Europe) Ltd., a specimen of the signature of each person authorized by the resolutions referred to in paragraph (f)(i) of this Section 6.1, or in the case of NPM Silmet OÜ, an excerpt from the Estonian Commercial Register evidencing the recordation in the Estonian Commercial Register of the authorized representative of such Transaction Party.

(h) *Insurance.* Copies of insurance policies showing that each Transaction Party has insured its properties and business in accordance with Section 8.2 hereof in a commercially reasonable manner, together with a certificate of the insurance broker or agent confirming that such policies are in effect and setting forth the coverage, limits of liability, policy number and period of coverage and showing that each such insurance policy shall remain in effect for thirty (30) days after notice of cancellation thereof has been given to EDC.

(i) *Contract.* Reserved.

(j) *Authorizations and Consents.* Except with respect to the Thailand Foreign Business License, certified copies of all approvals, qualifications, authorizations, licenses, consents and permits of any Governmental Authority or any other third party that are necessary for the fulfillment of the obligations of each Transaction Party hereunder or under any other Transaction Document.

(k) *Process Agent.* Evidence of the acceptance of the Process Agent duly executed and delivered by the Process Agent.

(l) *Know Your Customer.* All documentation and other evidence in relation to the Transaction Parties as EDC shall have reasonably requested in order for EDC to carry out its "know your customer" review and corporate social responsibility, and EDC shall have determined that all of its KYC Requirements and have been satisfied, including, but not limited to, an Individual Transaction Disclosure Consent Form delivered by the Borrower.

(m) *Fees and Expenses.* The Borrower shall have paid all fees and expenses of EDC's external counsels.

(n) *Foreign Business License.* Proof of application of a Thailand Foreign Business License for Magnequench (Korat) Co., Ltd. for provision of the guarantee under this transaction issued by the Ministry of Commerce of Thailand.

(o) *E&S Due Diligence.* All documentation and other evidence in relation to the Transaction Parties as EDC shall have reasonably requested in order for EDC to carry out its review of the Environmental and Social Action Plan, the Environmental and Social Management Plan and other related Environmental and Social Matters due diligence satisfactory to EDC, and the review of the Borrower's Environmental and Social Action Plan (as determined by EDC) and the Borrower's Environmental and Social Management Plan satisfactory to EDC such that EDC's Environmental and Social Matters requirements have been met.

(p) *Corporate Structure.* Confirmation of the Transaction Parties' corporate structure, including, but not limited to, a corporate structure chart certified by a director of Neo Performance Materials (Singapore) Pte. Ltd..

(q) *Other Documents.* The Transaction Parties shall have delivered to EDC such other documents as EDC may reasonably request.

6.2 Conditions Precedent to All Loans. The obligation of EDC to make any Loan is also subject to the satisfaction of the following additional conditions precedent:

- (a) *Request for Loan.* EDC will have received a Request for Loan;
- (b) *Financial Covenants.* EDC will have received a certificate of a Financial Officer of the Borrower setting forth the calculation of the ratios set forth in section 8.6 (*Financial Covenants*) as of the close of the most recently completed Fiscal Quarter;
- (c) *Representations and Warranties.* The representations and warranties made by the Transaction Parties in this Agreement shall continue to be true on and as of the date of the making of the particular Loan, unless such representation or warranty is made as of a specific date, then shall be true as of that date;
- (d) *No Default.* No Default shall have occurred and be continuing or would result from the requested Loan;
- (e) *No Material Adverse Effect.* No event or circumstance shall have occurred which has resulted in, or would reasonably be expected to result, in a Material Adverse Effect since the end of the most recently completed Fiscal Year of the Borrower the most recently completed audited financial statements delivered hereunder; and
- (f) *Fees and Expenses.* EDC will have received from the Borrower all fees and expenses payable by the Borrower to EDC.

6.3 Conditions Precedent to Tranche 1. The obligation of EDC to make any Loan under Tranche 1 is also subject to the satisfaction of the following additional conditions precedent:

- (a) *Construction.* The Borrower has provided proof satisfactory to EDC in its absolute and sole discretion that the following has occurred and EDC has been provided with proof of same:
  - (i) Detail engineering for the NAMCO Project, including all specifications, plans, documents and drawings that are issued for construction, erection and installation purposes in respect of the NAMCO Project as required by EDC; and
  - (ii) Construction has mobilized at the NAMCO Project Site.
- (b) *NAMCO Project Tranche 1 Documents.* The Borrower shall have delivered to EDC the following documents all in the form and content satisfactory to EDC:
  - (i) NAMCO Project's PCM contract executed by the PCM contractor and NAMCO detailing engineering, procurement, construction management, and commissioning services with "full notice to proceed" issued thereunder;
  - (ii) The PCS;

- (iii) The PCBSS;
- (iv) A Construction Progress Certificate (to be provided with all supporting documents and information no less than 10 business days prior to the date of the Request for Loan); and,
- (v) An Expenditure Certificate (to be provided with all supporting documents and information no less than 10 business days prior to the date of the Request for Loan).

6.4 Conditions Precedent to Tranche 2. The obligation of EDC to make any Loan under Tranche 2 is also subject to the satisfaction of the following additional conditions precedent:

(a) *NAMCO Project Tranche 2 Documents.* The Borrower shall have delivered to EDC the following documents all in the form and content satisfactory to EDC:

- (i) A Construction Progress Certificate (to be provided with all supporting documents and information no less than 10 business days prior to the date of the Request for Loan);
- (ii) An Expenditure Certificate (to be provided with all supporting documents and information no less than 10 business days prior to the date of the Request for Loan); and,
- (iii) A certificate of an officer of the Borrower certifying that (i) actual cumulative NAMCO Project expenditure is not less than USD 25,000,000, and not less than 85% of the planned cumulative expenditure in the PCBSS then in effect, and (ii) actual cumulative construction progress is not less than 85% of planned cumulative construction progress in the PCS then in effect.

6.5 Conditions Precedent to Tranche 3. The obligation of EDC to make any Loan under Tranche 3 is also subject to the satisfaction of the following additional conditions precedent:

(a) *NAMCO Project Tranche 3 Documents.* The Borrower shall have delivered to EDC the following documents all in the form and content satisfactory to EDC:

- (i) A Construction Progress Certificate (to be provided with all supporting documents and information no less than 10 business days prior to the date of the Request for Loan);
- (ii) An Expenditure Certificate (to be provided with all supporting documents and information no less than 10 business days prior to the date of the Request for Loan); and,
- (iii) A certificate of an officer of the Borrower certifying that (i) actual cumulative NAMCO Project expenditure is not less than USD 50,000,000, and not less than 85% of the planned cumulative expenditure in the

PCBSS then in effect, and (ii) actual cumulative construction progress is not less than 85% of planned cumulative construction progress in the PCS then in effect.

6.6 Waiver. The conditions set forth in sections 6.1 (*Conditions Precedent to Initial Borrowing*) and 6.2 (*Conditions Precedent to Borrowing*) are inserted for the sole benefit of EDC and may be waived by EDC in whole or in part (with or without terms or conditions), in respect of any Loan without prejudicing the right of EDC at any time to rely on such conditions in respect of any subsequent Loan.

## SECTION 7 – REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties. Each Transaction Party represents and warrants to EDC as follows, and acknowledges that EDC is relying upon such representations and warranties in entering this Agreement and in making Loans hereunder:

(a) *Power and Authority*. It:

- (i) is duly organized or incorporated and validly existing under the laws of its jurisdiction of incorporation or formation;
- (ii) has all requisite corporate or other power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same could not reasonably be expected to have a Material Adverse Effect;
- (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would reasonably be likely to (either individually or in the aggregate) have a Material Adverse Effect;
- (iv) has full power, authority and legal right to make and perform each of the Transaction Documents to which it is a party and to borrow or guarantee (as appropriate) the Loans hereunder;
- (v) is in material compliance with (i) all applicable laws and regulations (other than in the case of laws relating to corruption and bribery, Environmental and Social Permits and Sanctions which such compliance shall be in strict compliance); and (ii) all Material Agreements to which it is subject; and
- (vi) has good title to all its assets, free and clear of any Liens, except Permitted Liens.

(b) *Authorization; Binding Effect*. The making and performance by it of the Transaction Documents and all other documents and instruments to be executed and delivered

hereunder by it have been duly authorized by all necessary corporate action and each of such Transaction Documents and other documents and instruments has been duly executed and delivered by it and constitutes a valid and legally binding obligation of it enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application limiting the enforcement of creditors' rights generally and to general equitable principles, and do not and will not contravene:

- (i) its constitutive documents; or
- (ii) any applicable law, decree, regulation, judgment, award, injunction or similar legal restriction, as now in effect; or
- (iii) any agreement or instrument or material contractual restriction binding on or affecting it or its property, and do not and will not result in the imposition of any Lien on any property of the any Transaction Party, except Permitted Liens.

(c) *Governmental Authorization, No Conflict.* Except for a foreign business license required by Magnequench (Korat) Co., Ltd. in relation to the guarantee to be entered into by it, no license, consent, authorization or approval or other action by, or notice to or filing or registration with, any Governmental Authority (including any foreign exchange approval), and no other third-party consent or approval is necessary for the due execution, delivery and performance by it of the Transaction Documents to which it is a party or for the legality, validity or enforceability thereof against it.

(d) *Financial Information.* All of the financial statements that have been provided to EDC in connection with this Agreement are complete in all material respects and, fairly present, in conformity with GAAP, the financial position of the Borrower on a consolidated basis, as of the date thereof, and its results of operations and cash flows as of the date referred to therein.

(e) *No Material Adverse Effect.* Since the end of the most recently completed Fiscal Year end of the Borrower, there has been no Material Adverse Effect, or any condition, financial or otherwise, event or change in any Transaction Party's business affairs or business prospects, which could reasonably be expected to constitute, or cause, a Material Adverse Effect.

(f) *Litigation.* There is no litigation, investigation or proceeding pending or, to the best of its knowledge, threatened with respect to it by or before any Governmental Authority or arbitrator (i) with respect to the contest the consummation of the subject financing or (ii) that either (x) involves a claim against it equal to or greater than USD 10,000,000 (other than any Disclosed Litigation) or (y) could reasonably be expected to have a Material Adverse Effect.

(g) *Judgments, Etc.* It is not subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation, (other than customary or ordinary course restrictions, rules and regulations consistent or similar with those imposed on other Persons engaged in similar businesses) that has not been stayed or of which enforcement has not been suspended and that individually or in the aggregate involves a claim against it equal to or greater

than USD 10,000,000 (other than any Disclosed Litigation) or could reasonably be expected to have a Material Adverse Effect.

(h) *Environmental and Social Matters.* Its operations and property, including the NAMCO Project:

- (i) has at all times complied and currently complies with all applicable Environmental Law and Social Laws, except (other than in the case of corruption, bribery or Sanctions) to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect, and it is in compliance with its Environmental and Social Action Plan and Environmental and Social Management Plan; and
- (ii) is in compliance with the Environmental and Social Management Plans and the Environmental and Social Management System; and
- (iii) has implemented, observes and is in compliance with the Environmental and Social Standards, except for those actions identified in the Environmental and Social Action Plan as to be addressed within the timelines set out in the Environmental and Social Action Plan; and
- (iv) are in compliance with the Environmental and Social Action Plan

(i) *Taxes.*

- (i) It has filed all Tax returns which are required to be filed by it and has paid all Taxes due pursuant to such returns or pursuant to any assessment received by it, except for those which are being contested in good faith, by appropriate proceedings diligently conducted, provided adequate reserves with respect to such contest are maintained on the books of the Borrower in accordance with IFRS.
- (ii) Under the laws of its country of domicile, the execution, delivery and enforcement and admissibility into evidence of this Agreement or any Transaction Document to which it is a party, and the performance by it of its obligations hereunder, including any payment due to EDC, are exempt from all Taxes.

(j) *Rank of Obligations.* Its Indebtedness under the Transaction Documents ranks and will at all times rank (i) with respect to the Secured Transaction Parties which are subject to a Security Agreement, in first priority (subject to Permitted Liens); (ii) and with respect to all other Guarantors at least *pari passu* in right of payment with all unsecured, unsubordinated Indebtedness for which it is liable at any time.

(k) *Collateral.* It is, or with respect to the Collateral acquired after the date hereof, will be, the sole beneficial owner of the Collateral, free and clear of any Liens except for the Permitted Liens.

(l) *Proper Legal Form, No Immunity.* Each Transaction Document is in proper legal form under the laws of its country of domicile and may be enforced in accordance with its terms against it in a proceeding at law in any competent court in its country of domicile. The execution, delivery and performance by it of the Transaction Documents constitute private and commercial acts rather than public or governmental acts. Neither it nor any of its assets has the benefit of any immunity in any jurisdiction from legal proceedings, the jurisdiction of the civil courts or any, judgment, attachment (whether before or after judgment), set-off or execution of a judgment or from any other legal process or remedy relating to its obligations under the Transaction Documents. If it or any of its assets should become entitled to any such right of immunity, the Borrower has effectively waived such right pursuant to section 10.8 (Governing Law; Submission to Jurisdiction).

(m) *Compliance with Laws and Agreements.* It is in compliance with all applicable laws, regulations and requirements of any Governmental Authority having jurisdiction over it or its properties and all material agreements, charges and other instruments binding upon it or its property, other than (except in the case of laws relating to corruption, bribery and Sanctions) where such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(n) *Choice of Law, Submission to Jurisdiction.* The choice of law of this Agreement is a valid and binding choice of law and the irrevocable submission by each Transaction Party to the non-exclusive jurisdiction of the courts as set out in section 10.8 (Governing Law; Submission to Jurisdiction) is legal, valid, binding and enforceable.

(o) *Full Disclosure.* All information furnished by it to EDC in connection with this Agreement and each other Transaction Document or any transaction contemplated hereby is, and all such information hereafter furnished by it to EDC will be, true, complete and accurate in all respects on the date as of which such information is stated or certified and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements are made.

(p) *Subsidiaries.* The Borrower has no Subsidiaries except as disclosed on Schedule 7.1(p) attached hereto, as such Schedule may be amended from time to time.

(q) *Sanctions: Laws.* Neither it nor any of its directors, officers, or any of its Subsidiaries, is engaged, directly or indirectly, in any activity which is prohibited under the Sanctions, including without limitation, (A) any direct or indirect dealings involving or benefitting (x) a Person that is listed on, or owned or controlled by, or acting on behalf of a Person that is a Sanction Target; (y) a Person located in, organized under, or owned or controlled by, or acting on behalf of, a Person located in or organized under the laws of a Sanctioned Jurisdiction; (z) a Person that is owned or controlled by, or acting for or on behalf of, or providing assistance, support or services of any kind to, or otherwise associated with any Person in (x) or (y); (B) any business or making or receiving any contribution of funds, goods or

services to or for the benefit of any Person described in (x)-(z); (C) any dealing in, or otherwise engaging in any transaction relating to any property or interests in property subject to prohibitions under Sanctions; and (D) any transaction that evades, avoids or attempts to violate any of the prohibitions set forth in the Sanctions or has such a purpose.

(r) *Sanctions: Not a Target.* Neither it nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer, employee, agent, or representative of the Borrower or any of its Subsidiaries, is an individual or entity that is, or is owned or controlled by, or is acting on behalf of a Person that is a Sanctions Target or located in or organized under the laws of a Sanctioned Jurisdiction.

7.2 Survival of Representations and Warranties. The representations and warranties made in section 7.1 (Representations and Warranties) shall survive the execution and delivery of this Agreement and shall be deemed to have been repeated by each Transaction Party:

- (a) on each Borrowing Date; and
- (b) on the first day of each Interest Period,

in each case with reference to the facts and circumstances then existing and, in the case of section 7.1(d) (Financial Information), with respect to the most recently audited financial statements or most recently delivered unaudited interim financial statements, as the case may be.

## SECTION 8 – COVENANTS

8.1 Affirmative Covenants. Each Transaction Party covenants and agrees with EDC that, unless compliance has been waived in writing by EDC and so long as any Loan is outstanding and until payment in full by the Borrower hereunder:

- (a) *Authorizations, Compliance with Laws.*
  - (i) It will obtain and maintain in force (or cause to be obtained and maintained in force) all Environmental and Social Permits;
  - (ii) It will obtain and maintain in force (or where appropriate, promptly renew) all other Authorizations required by law or regulation of its jurisdiction of incorporation to enable it to perform its obligations hereunder and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of formation or incorporation of this Agreement, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect;
  - (iii) It will at all times comply with all applicable laws and regulations relating to it excepting only, to the extent such laws and regulations do not relate to corruption, bribery and Sanctions (which such compliance shall be in strict compliance), the extent the failure to so comply would not reasonably be expected to have a Material Adverse Effect.

(b) *Maintenance of Existence.* It will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence.

(c) *Financial Statements.* The Borrower will furnish to EDC:

- (i) as soon as available and in any event within 120 days after the end of each Fiscal Year, the annual audited financial statements of the Borrower prepared on a consolidated basis, together with an auditor's report from an accounting firm acceptable to EDC to the effect that the financial statements provided present fairly in all material respects the Borrower's financial condition and results of operation in accordance with GAAP consistently applied.
- (ii) as soon as available and in any event within sixty (60) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of the Borrower the balance sheet and related statement of operations as of the end of and for such Fiscal Quarter and the then elapsed portion of the Fiscal Year, prepared by the Borrower on a consolidated basis, and certified by a Financial Officer of the Borrower as presenting fairly in all material respects its financial condition and results of operation in accordance with GAAP consistently applied.
- (iii) as soon as available and in any event within thirty (60) days after the end of each Fiscal Quarter of the Borrower, a certificate of a Financial Officer of the Borrower, the calculation of the financial covenants set forth in section 8.6 (*Financial Covenants*).
- (iv) as soon as available and in any event within thirty (30) days after the end of each Fiscal Quarter of the Borrower and until completion of the NAMCO Project, (i) a construction progress certificate for the period, and (ii) if there has been an amendment to the PCBSS or PCS during such Fiscal Quarter, an updated PCBSS and/or PCS, all prepared by the Borrower, as the case may be.
- (v) The Borrower will also furnish to EDC from time to time such other information regarding its financial condition, operations, business or prospects as EDC may reasonably request.

(d) *Notices.* Promptly after it becomes aware that any Default has occurred and is continuing (including any Default which occurs after requesting a Loan but prior to the making of a Loan), deliver to EDC a notice describing the Default and the action that it has taken or proposes to take with respect thereto.

(e) *Further Assurances.* It will, at its own cost and expense, execute and deliver to EDC all such documents, instruments and agreements and do all such other acts and things as may be reasonably required, in the opinion of EDC, to carry out the purpose of this Agreement

or any other Loan Document to which it is a party or to enable EDC to exercise and enforce its rights under hereunder or thereunder.

(f) *Payment of Obligations.* It will pay its obligations, including Taxes, when due, except where:

- (i) the validity or amount thereof is being contested in good faith by appropriate proceedings; and
- (ii) it has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

(g) *Negative Pledge.* It will ensure that no Lien will be created or permitted to exist over all or any of the present and future property or assets other than Permitted Liens.

(h) *Other Indebtedness.* It will not at any time directly or indirectly, create, incur, assume or otherwise be or become liable with respect to any Indebtedness other than:

- (i) Permitted Debt;
  - (ii) its present Indebtedness and such other Indebtedness as may be approved in writing by EDC from time to time; and
  - (iii) Indebtedness secured by Permitted Liens.
- (i) *Environmental and Social Matters Issues.* It will:
- (i) comply and shall ensure the NAMCO Project complies with all applicable Environmental Law and Social Laws and Environmental and Social Standards, with respect to it or the NAMCO Project, including obtaining and maintaining all relevant Environmental and Social Permits necessary to ensure that there is no Material Adverse Effect; and,
  - (ii) within 20 Business Days after the occurrence of any of the events set out in this clause supply EDC (i) details of any incident of an environmental nature (including without limitation any explosion, spill or workplace accident which results in death, serious or multiple injuries or material environmental contamination) or any incident of a social nature (including without limitation any violent labour unrest or dispute with local communities), occurring on or nearby to the NAMCO Project Site, and as soon as reasonably practical thereafter a description of any remedial or corrective action taken, promptly notify EDC of any Environmental and Social Matters claim, notice or order against it; and
  - (iii) permit employees or other authorized representatives of EDC, and the Independent Environmental and Social Consultant during normal working hours and on reasonable advance notice and, at the cost of the Borrower to

carry out environmental and/or social monitoring visits at the NAMCO Project Site; and

- (iv) Deliver to EDC, promptly following any request therefor, such information regarding the environmental and social performance and/or management of the NAMCO Project, as EDC may from time to time reasonably request; and
- (v) Ensure the continuing compliance with, implementation and operation of the Environmental and Social Plans and Environmental and Social Management Systems; and
- (vi) Comply with and shall ensure that the NAMCO Project is in compliance with, the Environmental and Social Action Plan; and
- (vii) prepare and deliver to EDC an Environmental and Social Monitoring Report within 30 days from the date of this Agreement and for each semi-annual period until the Project has been operational for one year.

(j) *Fundamental Changes.* Without limiting in any way the provisions of section 8.1(k) (*Acquisitions*), it will not amalgamate, merge or consolidate (each a "Merger") with any other Person ("Merger Target") without the prior written consent of EDC, provided that a Transaction Party may enter a Merger where all of the following conditions have been met:

- (i) the Merger Target is in the same or similar business of such Transaction Party;
- (ii) the Merger Target is another Transaction Party;
- (iii) the Merger Target is not located in a Sanctioned Jurisdiction and is not a Sanctions Target;
- (iv) immediately prior to and after giving effect to such Merger, the Borrower is in compliance with all financial covenants under Section 8.6 hereof;
- (v) it is the surviving entity or the surviving entity assumes all of its obligations under this Agreement, as confirmed in legal opinions satisfactory to EDC;
- (vi) prior to and immediately after giving effect to such Merger, no Default exists or will exist;
- (vii) immediately after giving effect to such Merger, its obligations under each Transaction Document will rank (i) with respect to the Secured Transaction Parties in first priority; (ii) and with respect to all Unsecured Transaction Parties at least *pari passu* with all other senior unsecured Indebtedness of the surviving entity and will continue to so rank; and

- (viii) if the Merger Target is the Borrower, the surviving entity is incorporated in Canada;
- (ix) such Merger would not have a Material Adverse Effect.

Notwithstanding the foregoing, if the Merger is funded by debt, the Borrower shall provide financial projections to EDC demonstrating that the Merger will be EBITDA accretive, and that the Borrower shall be in covenant compliance post-Merger.

(k) *Acquisitions.* It will not acquire (each an "Acquisition") any other Person or any business (including any division of any business), or all or substantially all of the assets of any person engaged in any business (each, an "Acquisition Target"), whether in a single transaction or series of transactions, without the prior written consent of EDC, provided that the Borrower may enter an Acquisition where all of the following conditions have been met:

- (i) the Acquisition Target is in the same or similar business of the Borrower;
- (ii) the Acquisition Target is not located in a Sanctioned Jurisdiction and is not a Sanctions Target;
- (iii) immediately prior to and after giving effect to such Acquisition, the Borrower is in compliance with all financial covenants under Section 8.6 hereof;
- (iv) if the Acquisition Target is a Person, if such Person is a Material Subsidiary upon its Acquisition, it provides the deliverables required under section 8.1(q);
- (v) prior to and immediately after giving effect to such Acquisition, no Default exists or will exist;
- (vi) such Acquisition would not have a Material Adverse Effect; and
- (vii) the aggregate purchase price (including non-cash consideration) of all such Acquisitions during the term of this Agreement does not exceed USD 50,000,000.

Notwithstanding the foregoing, if the Acquisition is funded by debt, the Borrower shall provide financial projections to EDC demonstrating that the Acquisition will be EBITDA accretive, and that the Borrower shall be in covenant compliance post-Acquisition.

(l) *No Disposition of Assets.* Other than in connection with a Merger permitted under section 8.1(j) (*Fundamental Changes*), it will not sell, transfer, lease or otherwise dispose of (in one transaction or a series of transactions) its assets now owned or hereafter acquired, or liquidate or dissolve save and except:

- (i) dispositions of obsolete or worn out property in the ordinary course of business;

- (ii) dispositions of property among Transaction Parties which have provided security to EDC;
- (iii) disposition of property otherwise permitted pursuant to Section 8.1(n);
- (iv) provided that no Default exists and immediately after the disposition no Default will exist, in any calendar year, other disposals by the Borrower and Subsidiaries in the aggregate fair market value exceeding USD 7,500,000 per year; and,
- (v) disposals whereby the proceeds are reinvested within 180 days from the receipt of such proceeds, or are used to repay the Indebtedness.

(m) *Use of Proceeds.* The proceeds of the Loans hereunder shall be used to pay the costs associated with this Agreement and to finance the NAMCO Project.

(n) *Transactions with Affiliates.* It will not sell, lease, loan or otherwise transfer any of its property or assets to, or purchase, lease or otherwise acquire property or assets from any of its Affiliates, except at prices and otherwise on terms not less favourable than could be obtained on an arm's length basis from third parties, except, with respect to intercompany loans existing on the date of this Agreement disclosed on Schedule 8.1(n) hereto, and loans and transactions otherwise expressly permitted herein.

(o) *Inspection.* It will, on receipt of reasonable notice and during normal business hours, enable and assist representatives of EDC to examine (and, if desired, copy) its records, to inspect any of its properties including the Collateral, if any, at any reasonable time and up to two times per year provided no Default has occurred and is continuing, and as often as desired upon the occurrence and continuation of a Default, and to discuss its business and affairs with its officers, all to the extent reasonably requested by EDC.

(p) *Collateral.* It will:

- (i) maintain and preserve all of the Collateral in good repair, working order and condition and, from time to time, make all necessary and proper repairs, renewals, replacements, additions and improvements thereto and carry on its business in a proper and efficient manner so as to preserve and protect the Collateral and the earnings, incomes, issues and profits thereof;
- (ii) in respect of the Borrower and the American Transaction Parties only, not locate or permit its records and the Collateral to be located at any location other than as set forth in Schedule 8.1(p)(ii);
- (iii) keep the Collateral free and clear of all Taxes, Liens and assessments, other than Permitted Liens;
- (iv) promptly notify EDC of any loss of or damage to the Collateral (in excess of USD 250,000.00);

- (v) promptly notify EDC of any change in the name or the location of its chief executive office; and
- (vi) take all steps and all actions as may be reasonably required or deemed advisable by EDC to perfect or more fully evidence EDC's rights and interest in the Collateral over which a security interest has been granted to EDC by the Borrower or any other Transaction Party under the Security Documents.

(q) *Additional Guarantees.* Within thirty (30) days after (i) Acquisition thereof in the case of any Acquisition Target, or (ii) otherwise the end of each Fiscal Quarter of the Borrower, the Borrower will, based upon *pro forma* (in the case of an Acquisition Target) or actual statements referred to in section 8.1(c)(i) or 8.1(c)(ii) (Financial Statements), as the case may be, and the financial statements of each Subsidiary for its most recent equivalent period, make a determination as to whether any of its Subsidiaries is a Material Subsidiary. If any Subsidiary is determined to be a Material Subsidiary, the Borrower will cause each such Material Subsidiary to execute and deliver, in favour of EDC, the following documents, within sixty (60) days after the end of the relevant Fiscal Quarter or Fiscal Year:

- (A) a Guarantee;
- (B) certified copies of resolutions of the directors (and shareholders or partners as applicable) of the Material Subsidiary (or similar documents) authorizing the execution and delivery of its Guarantee;
- (C) an incumbency certificate of the signing officers of the Material Subsidiary; and
- (D) if requested by EDC, an opinion of counsel to the Material Subsidiary in the form and content satisfactory to EDC in its sole discretion.

(r) *Know Your Customer Requirements.* Each Transaction Party shall, promptly upon the request of EDC from time to time, supply, or procure the supply of, such documentation and other evidence as EDC may reasonably request in order for EDC to carry out its ongoing "know your customer" review and be satisfied that it has complied with all of its KYC Requirements. Without limiting the generality of the foregoing, if:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (ii) any change in EDC's financial crime, "know your customer" and other similar checks and identification procedures;

- (iii) any change in the ownership greater than or equal to 25% control of the Borrower or any change of corporate status of a Guarantor after the date of this Agreement; or
- (iv) a proposed assignment or transfer by EDC of any of its rights and/or obligations under this Agreement to another party,

obliges EDC (or, in the case of paragraph (iv) above, any prospective new lender) to comply with KYC Requirements in circumstances where the necessary information is not already available to EDC or such prospective new lender, then each Transaction Party shall promptly upon the request of EDC or any prospective new lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested in order for EDC or, in the case of the event described in paragraph (iv) above, any prospective new lender to carry out and be satisfied it has complied with KYC Requirements in connection with the transactions contemplated in this Agreement and with respect to all relevant counterparties (as determined by EDC or such lender).

(s) *Foreign Business License.* Within 180 days of the date of the Borrowing Date of the initial Loan each of the following documents or evidence of satisfaction of the following matters, as the case may be, shall have been delivered to EDC, all in form and substance satisfactory to EDC:

- (i) Magnequench (Korat) Co., Ltd. shall provide to EDC proof of a Thailand foreign business license for Magnequench (Korat) Co., Ltd. for provision of the guarantee under this transaction issued by the Ministry of Commerce of Thailand (the "Thailand Foreign Business License");
- (ii) a guarantee from Magnequench (Korat) Co., Ltd. with applicable nominal stamp duty affixed on both original and duplicate copies of the guarantee;
- (iii) an opinion, dated on or about the date of the execution of the guarantee, of counsel to Magnequench (Korat) Co., Ltd. and the Borrower with respect to each Transaction Party covering such matters as EDC may reasonably request, including corporate, no conflict, registration, enforceability and foreign law opinions;
- (iv) an opinion, dated on or about the date of the execution of the guarantee, of counsel to EDC with respect to Magnequench (Korat) Co., Ltd. covering such matters as EDC may reasonably request;
- (v) a copy of the Search Report with respect to Magnequench (Korat) Co., Ltd.;
- (vi) a certified copy of the constitutive documents of Magnequench (Korat) Co., Ltd. and of resolutions of the Board of Directors or the Shareholders' Meeting (as applicable) of each Transaction Party and certificates such as EDC may require authorizing the Transactions;

- (vii) a certified copy of a power of attorney of Magnequench (Korat) Co., Ltd. authorizing any person to execute the Transaction Documents to which it may be a party (if applicable);
- (viii) a certificate of a duly authorized signing officer of Magnequench (Korat) Co., Ltd. as to the authority, incumbency and specimen signatures of the persons who have executed or will execute the Transaction Documents to which it may be a party and any other documents on behalf of Magnequench (Korat) Co., Ltd. (and EDC shall be entitled to rely on such certificate until EDC's receipt of notification in writing to the contrary); and
- (ix) Magnequench (Korat) Co., Ltd. shall have delivered to EDC such other documents as EDC may reasonably request.

8.2 Insurance. Each Transaction Party will, at its own expense, maintain with financially sound and reputable insurance companies insurance in such amounts and with such deductibles and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations as each Transaction Party. If so requested by EDC, each Secured Transaction Party will promptly cause all policies of insurance to name EDC as additional insured and/or first loss payee thereunder, as applicable, and to provide for at least 30 days' prior written notice to EDC of any modification or cancellation of such policy, and will promptly upon request by EDC from time to time provide to EDC evidence in form and substance satisfactory to EDC of the foregoing. In addition to the foregoing, the Borrower will, at its own expense, maintain with financially sound and reputable insurance companies (i) property insurance covering the NAMCO Project replacement value and the aggregate amount of the Commitment and (ii) third-party liability insurance in respect thereof in such amount and scope as is customary for property similar to the NAMCO Project that is kept in similar locations.

(b) All policies that are taken out from time to time in accordance with this section shall be issued by financially sound and responsible insurance companies and, if covered by additional insurance policies, shall be similar in form and substance to the Transaction Party's existing policies of insurance.

8.3 Application of the Insurance Proceeds. Without limiting the obligations of the Transaction Parties hereunder, in the event that any insurance required under this section shall not have been renewed thirty (30) days prior to the date on which such insurance is scheduled to lapse, EDC or its assignee may (but will not be obligated) to pay any premium necessary to renew such insurance or arrange and pay for any substitute insurance, and in such event the Transaction Party will be obligated to indemnify EDC or its assignee immediately, as the case may be, for the cost thereof.

8.4 Reserved.

8.5 Application of Insurance Proceeds.

(a) All monies and proceeds arising from any policy of insurance covering the Transaction Parties, their subsidiaries or any of their assets will be applied as follows:

(b) in circumstances where no Default has occurred and is continuing and such monies or proceeds are in an amount not exceeding USD [REDACTED], or the equivalent thereof in any other currency as determined by EDC, at the election of the Transaction Party (on behalf of its Subsidiary, if applicable), either towards: **Redacted – sensitive information**

- (i) restoring the Collateral to the condition described in section 8.1(p)(*Collateral*), or in the case of any other asset, to its insured repairable level;
- (ii) reinvested in the Borrower's business within 180 days; or
- (iii) payment of the then outstanding Indebtedness of the Borrower to EDC hereunder; and

(c) in circumstances other than those described in section 8.5(b), at the election of EDC:

- (i) towards payment of the outstanding Indebtedness of the Borrower to EDC hereunder;
- (ii) to the repair of the Collateral or applicable other insured asset;
- (iii) reinvested in the Borrower's business within 180 days;
- (iv) to be held in part or in whole by EDC as security for the Indebtedness of the Borrower to EDC hereunder; or
- (v) in part or in whole, to any combination of the foregoing purposes.

8.6 Financial Covenants. The Borrower will not permit:

(a) *Leverage Ratio.* The Leverage Ratio to be greater than the ratio set forth below for each Fiscal Quarter during the term of this Agreement:

Maximum  
Leverage Ratio

2.5 to 1.0

(b) *Debt Service Coverage Ratio.* The Debt Service Coverage Ratio to be less than the ratio set forth below for each Fiscal Quarter during the term of this Agreement:

Ratio

1.25:1

All cash held by the Transaction Parties shall be permitted to be netted against total Debt, with no limit. All cash held by each Subsidiary not a Transaction Party shall be permitted to be netted only to a maximum amount equivalent to drawn Debt held by such Subsidiary, other than in the case of the China Group which shall be netted on an aggregated basis within the China Group to a maximum amount equivalent to aggregate drawn Debt held by the China Group.

8.7 Negative Covenants

(a) *Use of Proceeds.* It will not use the proceeds, contribute or otherwise make available the proceeds for any purpose which is prohibited under the Sanctions including without limitation, to any Person for the purpose of financing directly or indirectly the activities of any Person that:

- (i) is listed on, or owned or controlled by a Person that is listed on, or acting on behalf of a Person listed on, any list administered by a Sanctions Authority; or
- (ii) is in a country which is subject to Sanctions, to the extent such financing would be prohibited by the Sanctions.

(b) *Prohibition under Sanctions.* It, its directors, and officers will not, and it will take all reasonable steps to ensure that its Subsidiaries will not, engage, directly or indirectly, in any activity which is prohibited under the Sanctions (unless any such activity is conducted in compliance with a permit, certificate or other approval issued under the Sanctions), including without limitation, (A) any direct or indirect dealings involving or benefitting (x) a Person that is listed on, or owned or controlled by, or acting on behalf of a Person that is a Sanctions Target; (y) a Person located in, organized under, or owned or controlled by, or acting on behalf of, a Person located in or organized under the laws of a Sanctioned Jurisdiction; (z) a Person that is owned or controlled by, or acting for or on behalf of, or providing assistance, support or services of any kind to, or otherwise associated with any Person in (x) or (y); (B) any business or making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in (x)-(z); (C) any dealing in, or otherwise engaging in any transaction relating to any property or interests in property subject to prohibitions under Sanctions; and (D) any transaction that evades, avoids or attempts to violate any of the prohibitions set forth in the Sanctions or has such a purpose.

(c) *Distributions.* It will not (i) pay any dividends or make any distributions to shareholders (including by making loans), (ii) repay any indebtedness to any shareholder or related party (including by way of redemption of any shares or any other rights to withdraw capital), or (iii) purchase, repurchase, redeem or exchange any shares issued by it, in each case without the prior written consent of EDC (collectively "Distributions" and each a "Distribution"). Notwithstanding the foregoing:

- (i) the Borrower shall be permitted to:

- (A) pay dividends to its common shareholders provided that it is restricted to consolidated Free Cash Flow on a rolling four quarter basis; and
- (B) make Distributions provided that (i) it is restricted to consolidated Free Cash Flow; and (ii) the Borrower makes a repayment of the Indebtedness equal to the amount of the Distribution as required in accordance with Section 3.7(d);

provided that in either case there is no Default existing prior to and no Default will exist following such Distribution.

- (ii) a Transaction Party shall be permitted to:
  - (A) make or pay Distributions to another Transaction Party;
  - (B) make or pay Distributions to the extent necessary to cover tax obligations;
  - (C) make or pay Distributions up to an aggregate of USD 100,000,000 to the China Group or any member thereof to fund the NAMCO Project;
  - (D) make Distributions to a Subsidiary which is not a Transaction Party (other than a member of the China Group);
    - (1) as flow through or pass through dividends, provided that of the proceeds of any such a Distribution (i) no amount exceeding USD 5,000,000 shall reside with such a Subsidiary for longer than 30 days, or such longer period as EDC may agree in writing; and (ii) are ultimately released or paid over to a Transaction Party; or
    - (2) to fund ongoing operating costs or working capital in the ordinary course of business consistent with past practices;

provided that there is no Default existing prior to and no Default will exist following such Distribution.

## **SECTION 9 – EVENTS OF DEFAULT**

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

- (a) *Payment*. If any Transaction Party fails to pay: (i) any principal amount owing under this Agreement or any other Transaction Document when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or

(ii) any interest, fee or other amount payable hereunder or under any other Transaction Document when due and payable and such failure remains unremedied for a period of 2 Business Days.

(b) *Representations and Warranties.* If any representation or warranty made in this Agreement or in any other Transaction Document by any Transaction Party, or if any certificate or opinion furnished to EDC pursuant to the provisions hereof or of any other Transaction Document proves to have been incorrect, incomplete or misleading, in any material respect, as of the time made or repeated or deemed to be made or repeated and, if curable, the facts or circumstances which make such representation or warranty incorrect or misleading are not remedied and the representation or warranty in question remains incorrect or misleading more than 30 days after the earlier of: EDC notifies the Borrower of the same, or any Transaction Party has knowledge of such facts or circumstances;

(c) *Failure to Perform.* If any Transaction Party defaults in the performance of any of its obligations under sections 8.1(a) (*Authorizations, Compliance with Laws*), 8.1(g) (*Negative Pledge*), 8.1(h) (*Other Indebtedness*), 8.1(j) (*Fundamental Changes*), 8.1(k) (*Acquisitions*), 8.1(l) (*Disposition of Assets*) or 8.1(r) (*Know Your Customer Requirements*) or sections 8.7(a) (*Use of Proceeds*) or 8.7(b) (*Prohibition under Sanctions*), or if any Transaction Party fails to observe or perform any covenant or obligation hereunder, other than as specified in this section 9.1(c), and provided that such default is capable of being remedied, and such default remains unremedied for a period of thirty (30) days from the earlier of:

- (i) the date that notice thereof is given to the Borrower by EDC; and
- (ii) the date upon which the Borrower has knowledge of such default.

(d) *Insolvency.* If any Transaction Party fails to pay its debts generally as they fall due or suspends making payments on all or any class of its debts or announces an intention to do so or begins negotiations with one or more creditors with a view to rescheduling any of its Indebtedness.

(e) *Illegality.* If it becomes unlawful for any Transaction Party to perform any of its obligations under any Transaction Document or any of its obligations under any Transaction Document cease to be valid, binding or enforceable, or if any Transaction Party repudiates any Transaction Document or evidences its intention to repudiate any Transaction Document.

(f) *Bankruptcy or similar Proceedings.* If a proceeding is commenced, by or against any Transaction Party, in any court of competent jurisdiction, seeking its bankruptcy reorganization, liquidation, dissolution, arrangement or winding-up, the composition or readjustment of its debts or any other relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or for the appointment of a receiver, receiver and manager, custodian, trustee, monitor, liquidator or other person with similar powers with respect to the Transaction Party or all or part of its property, or if any such person is privately appointed pursuant to any agreement or instrument, or if any Person takes possession of all or any substantial portion of its assets, provided, however that if any proceeding is taken against a Transaction Party and such proceeding is opposed by such Transaction Party,

such proceeding shall not constitute an Event of Default unless such proceeding is not dismissed, stayed or withdrawn within thirty (30) days of the commencement of such proceeding.

(g) *Material Adverse Effect.* If an event or series of events occur which has or with the passage of time or notice or both, would have a Material Adverse Effect.

(h) *Reserved.*

(i) *Cross-Default. If:*

- (i) a Transaction Party or a Subsidiary defaults in the payment of any Indebtedness to any Person when due and such default continues beyond any applicable grace period set forth in the agreements or instruments evidencing or relating to such Indebtedness;
- (ii) any Indebtedness of a Transaction Party or a Subsidiary is declared to be or otherwise becomes or is capable of being declared due and payable prior to its specified maturity as a result of an event of default; or
- (iii) any commitment to make any Indebtedness available to a Transaction Party or a Subsidiary is cancelled or suspended by a creditor of thereof as a result of an event of default.

Other than with respect to any default in payment of any Indebtedness to EDC, no Event of Default will occur under this subsection if the aggregate principal amount of outstanding Indebtedness mentioned in this subsection is less than USD 5,000,000 (or its equivalent in any other currency or currencies).

(j) *Authorizations.* If any Authorization by a Governmental Authority necessary for the performance of any obligation of any Transaction Party under any Transaction Document ceases to be in full force and effect, including any Authorization to acquire and remit USD, and provided that such default is capable of being remedied, and such default remains unremedied for a period of thirty (30) days from the earlier of:

- (i) the date that notice thereof is given to the Borrower by EDC; and
- (ii) the date upon which the Transaction Party has knowledge of such default.

(k) *Loss of Priority.* If a Security Document ceases to constitute a first priority security interest in the Collateral (subject only to Permitted Liens) is the subject of a representation in section 7.1(j).

(l) *Disposition of Collateral.* Except as specifically permitted in this Agreement, if any Transaction Party sells or otherwise disposes of all or any part of the Collateral without the prior written consent of EDC or all or any part of the Collateral is seized or possession thereof acquired pursuant to any writ of seizure or other judicial procedure.

(m) *Failure to Perfect.* If the Borrower fails to take all steps and all action as may be reasonably required or deemed advisable to perfect or more fully evidence EDC's rights in the Collateral pursuant to the applicable Security Document.

(n) *Change of Control.* If a Change of Control shall have occurred.

(o) *Reserved.*

(p) *Political and economic risk.* Any of the following events occurs:

(i) an act of war or hostilities, invasion, armed conflict or act of a foreign enemy, revolution, insurrection or insurgency occurs in, or involves, a Transaction Party's Country, or any of the foregoing events threatens to occur;

(ii) the government of Transaction Party's Country or any agency thereof takes any step to seize, expropriate or nationalize any Transaction Party or any of its assets or revenues ;or

(iii) the government of Transaction Party's Country announces a general moratorium on the payment of foreign currency Indebtedness, and, in the opinion of EDC, such event is likely to have a Material Adverse Effect.

(q) *Government Controls.* Any Governmental Authority takes any action that, in the opinion of EDC:

(i) prohibits the Transactions;

(ii) materially restricts the Transactions; or

(iii) materially restricts the flow of funds to or from any of the Borrower's accounts.

(r) *Tax Events.* Any Governmental Authority takes any action (including attaching, seizing or confiscating assets, or any other legal or administrative proceedings) against the Borrower or any other Transaction Party, or any of its or their assets, where such action arises as a result of the actual or alleged non-payment, late payment or under-payment of tax by the Borrower or any other Transaction Party, and EDC determines that such action is likely to have a Material Adverse Effect.

(s) *China Restrictions.* Any (i) expropriation by a Governmental Authority in China of some, or all, of the assets located in China; (ii) loss of material permit in China, including, but not limited to, a permit to separate rare earths; or (iii) restriction or prohibition to convert or transfer funds with purpose of distributing outside of China;

(t) *Litigation.* There is a litigation, investigation or proceeding pending or threatened with respect to it by or before any Governmental Authority or arbitrator (i) with respect to the

contest the consummation of the subject financing or any Loan Documents, or (ii) that could reasonably be expected to have a Material Adverse Effect.

(u) *Judgments, Etc.* Except in respect of any Disclosed Litigation, the entry of any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation that (i) individually or in the aggregate involves a claim against it equal to or greater than USD 10,000,000 and (ii) remains outstanding for a period exceeding 30 days provided that (x) no enforcement proceedings have been commenced; (y) there is a period during which a stay of enforcement of that judgment or order, by reason of a pending appeal or otherwise, could be obtained; or (z) it could not reasonably be expected to have a Material Adverse Effect.

9.2 Default Remedies. Upon the occurrence of an Event of Default, EDC shall have no further obligation to make Loans hereunder, and, at its option, may declare all or part of the Indebtedness of the Borrower under this Agreement to be due and payable either on demand or to be immediately due and payable without demand, in each case, all without presentment, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that if an Event of Default described in section 9.1(f) occurs with respect to the Borrower, the Commitment (if not theretofore terminated) shall automatically terminate and all Indebtedness of the Borrower under this Agreement shall automatically become and be immediately due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

In such event EDC may, in its discretion, exercise any right or recourse and proceed by any action, suit, remedy or proceeding against the Borrower or any other Transaction Party authorized or permitted by law for the recovery of all the Indebtedness of the Borrower to EDC hereunder and proceed to exercise any and all rights hereunder and under the Security Documents.

EDC is not under any obligation to any Transaction Party to realize upon any Collateral or enforce the Security Documents or any part thereof or to allow any of the Collateral to be sold, dealt with or otherwise disposed of. EDC is neither responsible nor liable to the Transaction Parties or any other Person for any loss or damage arising from such realization or enforcement or the failure to do so or for any act or omission on its part or on the part of any director, officer, employee, agent or adviser of EDC in connection with any of the foregoing.

The rights and remedies of EDC hereunder or under any other Transaction Document are cumulative and are in addition to and not in substitution for any other rights or remedies available at law or in equity or otherwise. No single or partial exercise by EDC of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which EDC may be entitled.

It is not necessary for any Person dealing with EDC to inquire whether any Security Document has become enforceable, or whether the powers that EDC is purporting to exercise may be exercised, or whether any Indebtedness or any Transaction Party to EDC remains outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale is to be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the Collateral or any part thereof.

9.3 Application of Payments. All payments made by the Borrower hereunder or received from proceeds of the enforcement or realization of any Security Documents will be applied to the Indebtedness of the Borrower hereunder, as determined by EDC.

## **SECTION 10 – MISCELLANEOUS**

10.1 No Waiver. No failure on the part of EDC to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Transaction Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. Any waiver by EDC of the strict compliance with any term of this Agreement or any other Transaction Documents will not be deemed to be a waiver of any subsequent Default.

10.2 Notices. Any notice, demand, waiver, consent, or any other communication under this Agreement or any other Transaction Document must be in writing to be effective and will be hand-delivered or sent by registered mail or by fax to the following addresses:

for the Borrower,

Neo Performance Materials Inc.  
121 King Street West, Suite 1740  
Toronto, ON  
M5H 3T9

Attention: Rahim Suleman, CFO  
Fax: (416) 367-5471

with a copy to:

121 King Street West, Suite 1740  
Toronto, ON  
M5H 3T9

Attention: Alexander Caldwell, VP, Administration  
Fax: (416) 367-5471

for EDC,

EXPORT DEVELOPMENT CANADA  
150 Slater Street  
Ottawa ON K1A 1K3

Disbursement and repayment matters:

Attention: Loans Services  
Email: LS-directlending@edc.ca

Financial and covenant reporting matters:

Attention: Covenants Officer  
Email: covenantsofficer@edc.ca

All other matters, including amendments, waivers and consents:

Attention: Matthew Visser  
Email: mvisser@edc.ca  
Telephone: (343) 548-6784

or such other address, or fax number or to the attention of such other individual which either party may from time to time notify the other in writing.

Any notice or other communication delivered by hand or by registered mail will be deemed to have been given and received the earlier of actual receipt and seven days after posting. Any notice or other communication transmitted by fax, e-mail or other electronic means will be deemed to have been given and received on the day of transmission, provided that (a) such notice or other communication is in readable form and (b) if the notice or other communication is not transmitted on a Business Day and during the normal business hours of the intended recipient, such notice or other communication will be deemed to have been given on the opening of business on the next Business Day.

In this section, "Business Day" means a day in the recipient's jurisdiction when banks are generally open for public business. Communications sent to an email address will be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement).

10.3 Expenses. The Borrower will reimburse EDC within thirty (30) days of EDC's request therefor for all of EDC's out-of-pocket costs and expenses incurred in respect of the preparation, consularization, translation, negotiation, execution, amendment, operation, discharge of, or enforcement of, or the preservation of rights under this Agreement and the other Transaction Documents, including the reasonable fees and expenses of independent legal counsel for EDC and all travel costs of EDC and its independent legal counsel.

10.4 Indemnification. The Borrower hereby indemnifies EDC its directors, officers, employees, attorneys and agents and their respective heirs, executors, administrators, successors and assigns (each, an "Indemnified Party") from and against, any claim, damage, loss, liability,

judgment, suit, cost or expense of any kind (including reasonable fees and expenses of counsel), arising directly or indirectly out of:

(a) any breach by Borrower of any representation warranty or covenant contained herein or in any other Transaction Document;

(b) the enforcement by EDC of any right or remedy hereunder or under any other Transaction Document; and

(c) the ownership, possession, use, sale, lease or condition of any part of the Collateral;

provided that the foregoing indemnity will not, as to any Indemnified Party making a claim under this provision, apply to any claim, damage, loss, liability, judgment, suit, cost or expense of any kind to the extent that they have resulted from the willful misconduct, bad faith or gross negligence of such Indemnified Party.

10.5 Successors and Assigns. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. The Borrower may not transfer or assign any of its rights or obligations hereunder without the prior written consent of EDC. EDC may at any time, assign its rights and obligations hereunder in whole or in part to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or created for the purpose of making, purchasing or investing in loans, securities or other financial assets, provided that if there exists a Default, the Borrower's consent shall not be required. If EDC transfers or assigns its rights or obligations hereunder and as a result the Borrower is obligated to make a payment to the new lender under sections 5.1 and 5.5 on the day of such transfer or assignment, then the new lender is only entitled to receive payment under those sections to the same extent as EDC would have been if the transfer or assignment had not occurred.

10.6 Headings. The table of contents and section headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

10.7 Counterparts. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and the parties agree that delivery of an executed counterpart of a signature page to this Agreement by facsimile or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

10.8 Governing Law; Submission to Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(b) Each Transaction Party agrees that any legal proceeding with respect to this Agreement or to enforce any judgment obtained against a Transaction Party or its assets may be brought by EDC in the courts of the Province of Ontario, Canada, in the courts of the relevant

Transaction Party's country of domicile, in the courts of any jurisdiction where such Transaction Party may have assets or carries on business or in the courts in any other jurisdiction where payments are to be made hereunder, and each Transaction Party hereby irrevocably submits to the non-exclusive jurisdiction of each such court and acknowledges its competence. Each Transaction Party agrees that a final judgment against it in any such legal proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment (a certified or exemplified copy of which judgment will be conclusive evidence of the fact and of the amount of the Borrower's or a Guarantor's Indebtedness hereunder) or by such other means provided by law.

(c) Each Transaction Party agrees that this Agreement and the transactions contemplated herein constitute commercial activity and each Transaction Party irrevocably waives, for each relevant jurisdiction, any right of immunity which it or any of its property has or may acquire in respect of its obligations hereunder, including any immunity from jurisdiction, suit, judgment, set-off, execution, attachment (and in an action in rem, arrest, detention, seizure and forfeiture) or other legal process (including relief by way of injunction and specific performance).

(d) Each Transaction Party irrevocably appoints Neo Performance Materials Inc. (the "Process Agent"), presently having an office at 121 King Street West, Suite 1740, Toronto, ON, M5H 3T9, telephone no. (416) 367-8588, fax no. (416) 367-5471, as its true and lawful agent and attorney-in-fact in its name, place and stead to accept such service of any and all such writs, process and summonses, and agrees that the failure of the Process Agent to give any notice of any such service of process to a Transaction Party will not impair or affect the validity of such service or of any judgment based thereon. If for any reason the above mentioned company ceases to act, or to be able to act, as a Process Agent as contemplated hereby, the Transaction Parties will appoint a substitute therefor acceptable to EDC and agrees to maintain at all times an agent in Canada to act as its Process Agent. Each Transaction Party hereby further irrevocably consents to the service of process in any action or proceeding by the mailing thereof, by EDC, by registered or certified mail, postage prepaid, to the relevant Transaction Party at the address given herein or for the purposes of this Agreement; provided, however that nothing herein shall in any way be deemed to limit the ability of EDC to serve any such writs, process or summonses in any other manner permitted by applicable law or to obtain jurisdiction over such Transaction Party in such other jurisdictions, and in such manner, as may be permitted by applicable law.

(e) To the extent that each Transaction Party may be entitled to the benefit of any provision of law requiring EDC, in any action or proceeding brought in a court of any Transaction Party's domicile or other jurisdiction in connection with this Agreement, to post security for litigation costs or otherwise post a performance bond or similar security, Each Transaction Party hereby irrevocably waives such benefit, in each case to the fullest extent now or hereafter permitted under the laws of the relevant Transaction Party's country of domicile or, as the case may be, such other jurisdiction.

10.9 Waiver of Jury Trial. Each of the Transaction Parties and EDC hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

10.10 Treatment of Certain Information; Confidentiality. EDC agrees with the Borrower that it will use its reasonable efforts to keep confidential and not to disclose any non-public information supplied to it and marked as such by the Borrower in connection with this Agreement, provided that nothing herein shall limit the disclosure of any such information:

(a) to the extent required by statute, rule, regulation or judicial process or by Canada's or EDC's international commitments, including in relation to the WTO Subsidies and Countervailing Measures Agreement;

(b) to counsel for EDC;

(c) to bank examiners, auditors, consultants or accountants;

(d) in connection with any litigation or enforcement activity or other action relating to this Agreement or the transactions contemplated hereby to which EDC is a party;

(e) to any party with or through whom EDC enters or proposes to enter any kind of transfer, participation, subparticipation or assignment of, or to any party who would otherwise become directly or indirectly entitled to, EDC's rights and benefits hereunder or to successors of EDC; or

(f) any actual or prospective party to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payment hereunder.

10.11 Disclosure. Notwithstanding anything to the contrary herein, the Borrower agrees to EDC's disclosure to the public, following the date of this Agreement, of the following information: the name of the Borrower, EDC financial service provided and date of related agreement, a general description of the Transactions (including country), the amount of EDC support in an approximate dollar range.

10.12 Judgment Currency. The obligation of the Borrower under this Agreement to make payments in USD will not be discharged or satisfied by any payment or recovery, whether pursuant to any judgment or otherwise, expressed in or converted into any other currency except to the extent of the amount of USD that is actually received by EDC as a result of such payment or recovery. If, as a result of the conversion of any payment or recovery from another currency into USD, EDC receives less than the full amount of USD payable by the Borrower to EDC under this Agreement, the Borrower agrees to pay EDC such additional amount as may be necessary to ensure that the amount received by EDC is not less than the full amount of USD payable by the Borrower to EDC under this Agreement and such amount will be due as a separate debt and will not be affected by judgment being obtained for any other sums due under this Agreement.

10.13 Severability of Provisions. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

10.14 Entire Agreement. The Transaction Documents constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior agreements or understandings, written or oral, with respect thereto.

10.15 Survival. The provisions of sections 5.1 (*Additional Costs*), 5.4 (*Broken Funding*), 5.5 (*Taxes*), 10.3 (*Expenses*) and 10.4 (*Indemnification*), shall in each case survive any termination of this Agreement, the payment in full of all the Loans and the termination of the Commitment.

10.16 Use of English Language. The governing language of this Agreement and each other Transaction Document is English. This Agreement has been negotiated and executed in the English language. All documents and communications given or delivered pursuant to this Agreement and under any other Transaction Documents (including, without limitation, any amendments or supplements) shall be in the English language, or accompanied by a certified English translation thereof. Except in the case of laws or official communications of a Transaction Party's Country or in the case of any document originally issued in a language other than English, the English language version of any such document shall for purposes of this Agreement and under any other Transaction Document, and absent manifest error, determine the meaning of the matters set forth therein.

**[Remainder of Page Intentionally Left Blank]**

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

**NEO PERFORMANCE MATERIALS INC.**

By: /s/ "Rahim Suleman"

Name: Rahim Suleman

Title: Executive Vice President and Chief Financial Officer

**EXPORT DEVELOPMENT CANADA**

By: /s/ "Matthew Visser"

Name: Matthew Visser

Title: Financing Manager

By: /s/ "Mofor Fualah"

Name: Mofor Fualah

Title: Financing Manager

IN WITNESS WHEREOF, each Guarantor duly acknowledges this Agreement as of the day and year first written above.

**NEO PERFORMANCE MATERIALS (SINGAPORE) PTE. LTD.**

By: /s/ "Gregory Kroll"  
Name: Gregory Kroll  
Title: Director

**NPM SILMET OÜ**

By: /s/ "Raivo Vasnu"  
Name: Raivo Vasnu  
Title: Member of the Management Board

**MAGNEQUENCH (KORAT) CO. LTD.**

By: /s/ "Douglas B. McInnes"  
Name: Douglas B. McInnes  
Title: Director

**MAGNEQUENCH GMBH**

By: /s/ "Kai Schmersahl"  
Name: Kai Schmersahl  
Title: Managing Director

**NMT HOLDINGS GMBH**

By: /s/ "Kai Schmersahl"  
Name: Kai Schmersahl  
Title: Managing Director

**NEO PERFORMANCE MATERIALS ULC**

By: /s/ "Rahim Suleman"

Name: Rahim Suleman

Title: Executive Vice President and Chief Financial Officer

**NEO CHEMICALS AND OXIDES LLC**

By: /s/ "Kevin D. Morris"

Name: Kevin D. Morris

Title: Executive Vice President and Chief Operating Officer

**NEO MAGNEQUENCH DISTRIBUTION LLC**

By: /s/ "Kevin D. Morris"

Name: Kevin D. Morris

Title: Executive Vice President and Chief Operating Officer

**NEO CHEMICALS & OXIDES (EUROPE) LTD.**

By: /s/ "Jeffrey R. Hogan"

Name: Jeffrey R. Hogan

Title: Managing Director

## SCHEDULE 1.1

### DEFINED TERMS

1.1 Certain Defined Terms. In this Agreement, the following terms shall have the following meanings:

"Administration Fee" means the fee payable to EDC by the Borrower in accordance with section 3.9 (Administration Fee);

"Adjusted Daily Simple SOFR" means an interest rate per annum equal to (a) Daily Simple SOFR, plus (b) 0.11448% (11.448 basis points);

"Adjusted Term SOFR" means with respect to any tenor, the per annum rate equal to the sum of: (i) Term SOFR plus (ii) the applicable Credit Adjustment Spread; provided, that if Adjusted Term SOFR determined as provided above shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor;

"Adjusted Term SOFR Basis" means the calculation of interest on the outstanding amount of monies advanced in USD under this Agreement;

"Acquisition" has the meaning as set for in Section 8.1(k);

"Acquisition Target" has the meaning as set for in Section 8.1(k);

"Affiliate" means any Person:

(a) which directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the Borrower and any Subsidiary of the Borrower;

(b) a Subsidiary of the Borrower;

(c) which beneficially owns twenty percent (20%) or more of the Voting Shares or equity interests of the Borrower; or

(d) twenty percent (20%) or more of the Voting Shares or equity interests of which are beneficially owned by the Borrower;

"Applicable Margin" means [REDACTED] per annum **Redacted – sensitive information**;

"Applicable Tenor" means one (1) month, three (3) months or (6) months as determined by the Borrower, at the time of the advance of such Loan;

"Authorization" means any consent, registration, filing, agreement, certificate, license, approval, permit, authority or exemption from, by or with any Governmental Authority and all corporate, creditors' and shareholders' approvals or consents;

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark for any Currency, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 5.5(d);

"Availability Period" means eighteen months from the date of this Agreement;

"B&B Derivative Obligations" means, obligations comprised of a put option issued to the non-controlling interest of Buss & Buss under the terms of a share purchase agreement between NMT Holdings GmbH and other shareholders of Buss & Buss dated May 27, 2010;

"Benchmark" means, initially, with respect to any Indebtedness under the Transaction Documents, interest, fees, commissions or other amounts denominated in, or calculated with respect to, USD, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or then-current Benchmark for USD, then "Benchmark" means, with respect to such Indebtedness, interest, fees, commissions or other amounts, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 5.5;

"Benchmark Replacement" means, with respect to any Benchmark Transition Event for any then-current Benchmark, for the applicable Benchmark Replacement Date, the first alternative set forth in the order below that can be determined by EDC:

(a) Adjusted Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by EDC and the Borrower as the replacement for such Benchmark giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Authority or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in the applicable Currency at such time and (ii) the related Benchmark Replacement Adjustment;

provided that, in each such case, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents;

"Benchmark Replacement Adjustment" means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by EDC and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Authority or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Currency at such time;

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark for any Currency:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof);

"Benchmark Transition Event" means, with respect to the then-current Benchmark for any Currency, the occurrence of one or more of the following events with respect to such Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation

thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, the central bank for the Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof);

"Benchmark Transition Start Date" means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date; and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90<sup>th</sup> day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication);

"Benchmark Unavailability Period" means, with respect to any then-current Benchmark for any Currency, the period (if any) (a) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.5, and (b) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.5;

"Borrowed Loan" means the total principal borrowed by the Borrower hereunder during the Availability Period;

"Borrowing" means the borrowing by the Borrower of the Loans;

"Borrowing Date" means the date that a Loan is advanced to the Borrower hereunder;

"Business Day" means: (i) a day on which banks are open for business in the City of New York, USA, and Toronto, Canada; and (ii) with respect to all matters pertaining to SOFR Rate, a London Banking Day, but does not in any event include a Saturday or a Sunday;

"Buss & Buss" means, Buss & Buss Spezialmetalle GmbH;

"Change of Control" means the occurrence of any acquisition of Control of the Borrower by any Person or two or more persons acting in concert;

"China Group" means, collectively, Magnequench (Tianjin) Co., Ltd., Magnequench International Trading (Tian Jin) Co., Ltd., Jiangyin Jia Hua Advanced Material Resources Co., Ltd., Zibo Jiahua Advanced Material Resources Co., Ltd., Magnequench Magnetics (Chu Zhou) Co., Ltd. and Neo Jia Hua Advanced Materials (Zibo) Co., Ltd.;

"China Group Bank Debt" means debt of the China Group members' operating accounts to extent such debt is exclusively from a debit to another member(s) of the China Group's operating accounts located in China which is not greater than the positive balance in the other bank accounts of the China Group located in China, such that the aggregate bank accounts balance of the China Group located in China is not less than zero;

"Closing Date" means the date as of which all of the conditions precedents set forth in section 6.1 (*Conditions Precedent to Initial Loan*) have been satisfied or waived;

"Collateral" has the meaning given to that term in the Security Documents;

"Commitment" means the obligation of EDC to make Loans to the Borrower, in an aggregate principal amount up to but not exceeding USD 75,000,000 and divided into three (3) tranches as follows:

- (a) Tranche 1: up to but not exceeding USD 25,000,000 ("Tranche 1");
- (b) Tranche 2: up to but not exceeding USD 25,000,000 ("Tranche 2"); and
- (c) Tranche 3: up to but not exceeding USD 25,000,000 ("Tranche 3");

"Commitment Fee" means the fee payable by the Borrower to EDC in accordance with section 3.10 (*Commitment Fee*);

"Commitment Fee Payment Date" has the meaning ascribed thereto in Section 3.10 (*Commitment Fee*);

"Commitment Period" means the period from the date hereof until the date that the aggregate principal amount of the Loans that have been advanced equals the Commitment, or the Commitment or any remainder thereof has been cancelled in accordance with the terms hereof, and if such date is not a Business Day, the Commitment Period shall end on the immediately preceding Business Day;

"Consolidated Assets" means all assets of the Borrower and its Subsidiaries;

"Construction Progress Certificate" means a certificate of an officer of the Borrower confirming actual versus planned construction progress for NAMCO to include customary elements such as: (i) actual status of overall project, engineering, procurement, construction, and commissioning (incorporating description, % completion, reasons for significant deviations, key concerns and corrective actions); (ii) actual date of key milestones attained in the NAMCO Project. Paragraphs (i) and (ii) are intended to facilitate comparison to the PCS;

"Control" means the ownership of more than 50% of the Voting Shares of a corporation or the ability, direct or indirect, to direct or cause the direction of management or policies of a corporation, whether through ownership of Voting Shares by contract or otherwise and "Controlling" and "Controlled" have correlative meanings;

"Conforming Changes" means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day", "U.S. Government Securities Business Day" the definition of "Term SOFR Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that EDC decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by EDC in a manner substantially consistent with market practice (or, if EDC decides that adoption of any portion of such market practice is not administratively feasible or if EDC determines that no market practice for the administration of any such rate exists, in such other manner of administration as EDC decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents);

"Corporate Social Responsibilities" means all of EDC's (and, if there is an actual or prospective lender hereunder other than EDC, such other lender's) corporate social responsibilities and other similar policies and procedures, as well as those required under all applicable laws and regulations, in relation to the Transaction Parties and any Loan and with respect to all relevant counterparties (as determined by EDC or, if applicable, such other lender in its sole discretion), including but not limited to EDC's disclosure consent;

"Credit Adjustment Spread" means, for the Applicable Tenor, (i) 0.11448% (11.448 basis points) if the Term SOFR is one (1) month; (ii) 0.26161% (26.161 basis points) if the Term SOFR is three (3) months; and (iii) 0.42826% (42.826 basis points) if the Term SOFR is six (6) months;

"Currency" means USD;

"Daily Simple SOFR" means, for any day, a rate *per annum* equal to SOFR for the day, with the conventions for this rate (which will include a lookback) being established by EDC in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for its business loans; provided, that if EDC decides that any such convention is not administratively feasible for EDC, then EDC may

establish another convention in its discretion, acting reasonably, and in consultation with the Borrower;

"Default" means an event that, with notice or lapse of time, or both, would, unless cured, become an Event of Default;

"Distribution" shall have the meaning as set out in Section 8.7(c);

"Disclosed Litigation" means the pending or ongoing litigation involving a Transaction Party (i) which are set out in Exhibit "D" or (ii) such other pending or to the knowledge of such Transaction Party threatened litigation which may be consented to by EDC in writing from time to time, provided that in both cases such litigation does not result in a Material Adverse Effect;

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and air, water and land;

"Environmental and Social Action Plan" means the environmental and social action plan required, as the result of EDC due diligence process, to describe and prioritize the actions needed to address gaps in the Environmental and Social Requirements with the prior written consent of EDC , a copy of which is attached hereto as Exhibit "C";

"Environmental and Social Management Plan" means the environmental and social management plans for the Transaction Parties detailed in the Environmental and Social Action Plan;

"Environmental and Social Management System" means the Environmental and Social Matters management system to be described in the system manuals and related source documents, including policies, management programs and plans, procedures, requirements, performance indicators, responsibilities, training and period audits and inspections, with respect to Environmental and Social Matters designed to identify, assess and manage risk in respect of the Transaction Parties on an ongoing basis;

"Environmental and Social Monitoring Report" means an environmental and social monitoring report, in form and substance reasonably satisfactory to EDC prepared by the Independent Environmental and Social Advisor/Consultant, documenting compliance with the Environmental Laws, Social Laws, Environmental and Social Management Plans, and Environmental and Social Standards and containing a representation and warranty from the Transaction Parties of compliance with Environmental Laws and Social Laws;

"Environmental and Social Matters" means those environmental and social aspects identified in the Environmental and Social Impact Assessment or Environmental and Social Action Plan which are considered relevant to Transaction Parties or their assets;

"Environmental and Social Permits" means any permit, approval, identification number, license or other authorization required under any Environmental and Social Law;

"Environmental and Social Requirements" means, collectively, Environmental and Social Law and the applicable environmental and social standards in force during the time of the Agreement;

"Environmental and Social Standards" Means the IFC Performance Standards in force from time to time;

"Environmental Laws" means any applicable law and any applicable rule or regulations (including international treaty obligations) concerning environmental matters and natural resource;

"Event of Default" has the meaning set forth in Section 9 (Event of Default);

"Expenditure Certificate" means a certificate of an officer of the Borrower confirming actual versus planned expenditure for the NAMCO Project and shall include committed, incurred, and expensed expenditure in key activities and areas, and to facilitate comparison to the most recent PCBSS;

"Federal Funds Rate" means, for any day, the rate calculated by the Federal Reserve Bank of New York, based on such day's federal funds transactions by depository institutions, as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time and as published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate, or, if such day is not a Business Day, such rate for the immediately preceding Business Day for which the same is published 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 on such transactions received by EDC from three Federal funds brokers of recognized standing selected by EDC; provided that, if the rate determined as aforesaid shall ever be less than zero, such rate shall be deemed to be zero for purposes of this Agreement;

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States;

"First Repayment Date" means, 24 months from the date of this Agreement, provided if such day is not a Business Day, the First Repayment Date shall be the next Business Day;

"Fiscal Quarter" means each of the four (4) consecutive quarterly periods (namely, March 31, June 30, September 30 and December 31);

"Fiscal Year" means any period of four (4) consecutive Fiscal Quarters ending on December 31<sup>st</sup>;

"Floor" means zero percent (0%) per annum;

"GAAP" means, as applicable, International Financial Reporting Standards if the Person has adopted International Financial Reporting Standards or, if not, the accounting principles recognized as being generally accepted and in effect from time to time for private enterprises, as

published in the Handbook of the Canadian Institute of Chartered Accountants, with respect to such Transaction Party and all as consistently applied by such Transaction Party;

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other authority exercising executive, legislative, judicial, monetary, taxing, regulatory or administrative functions of or pertaining to government, including any supra-natural bodies such as the European Union or European Central Bank;

"Guarantee" means each guarantee given by each Guarantor in the form and content satisfactory to EDC, it is sole and absolute discretion;

"Guarantor" means each of Neo Performance Materials (Singapore) Pte. Ltd., NPM Silmet OÜ (a company incorporated in Estonia registered with the Estonian Commercial Register under registration number 10294959), Magnequench (Korat) Co., Ltd., Magnequench GmbH, NMT Holdings GmbH, Neo Performance Materials ULC, Neo Chemicals and Oxides LLC, Neo Magnequench Distribution LLC, and Neo Chemicals & Oxides (Europe) Ltd. (a company incorporated in England and Wales with registration number 02944664) and collectively the "Guarantors";

"IFC Performance Standards" means the IFC performance standards on environmental and social sustainability (including the technical reference documents known as the World Bank Group Environmental, Health and Safety Guidelines) dated January 1, 2012 as amended, modified, restated, replaced or updated from time to time;

"Increased Costs" has the meaning given to that term in section 5.1 (*Increased Costs*);

"Indebtedness" of any Person means, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such Person under capital leases, or leases which should be treated as capital leases in accordance with GAAP;
- (c) all obligations to pay the deferred purchase price of property or services other than trade accounts payable in the ordinary course of business such Person;
- (d) all reimbursement or other obligations with respect to the face amount of letters of credit (whether or not drawn) issued for the account of such Person or with respect to bankers' acceptances or any similar instrument; and
- (e) all obligations of such Person incurred for the purpose of, or having the effect of, providing financial assistance to another Person, including guarantees, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business) and obligations to purchase assets regardless of the delivery or non-delivery thereof or to make advances of money;

"Interest Payment Date" means the last day of each applicable Interest Period and, if any Interest Period is longer than 3 months, the last Business Day of each 3 month period during such Interest Period; provided that if any such date is not a Business Day, the relevant Interest Payment Date shall be the next occurring Business Day;

"Interest Period" means initially for a Loan, the period commencing on the Borrowing Date of such Loan a period of one, three or six months as selected by the Borrower as the Applicable Tenor or such shorter or longer period as may be agreed to by EDC and thereafter, the period commencing on the first day after the prior Interest Period for such Loan a period of one, three or six months as selected by the Borrower as the Applicable Tenor or such shorter or longer period as may be agreed to by EDC; provided that if the Borrower falls to select an Applicable Tenor in relation to any Loan after the initial Interest Period, the Borrower shall be deemed to have selected one month as the Applicable Tenor; provided that any Interest Period that would otherwise end on a day that is not a Business Day shall end on the next occurring Business Day; and provided further that for those amounts in default and payable hereunder, Interest Period means: (A) the period commencing on and including the date of default and ending on and including the earlier of (x) the date such amounts are paid; and (y) the date before the next subsequent Interest Payment Date; and (B) thereafter, the period commencing on and including a Interest Payment Date and ending on and including the earlier of (x) the date such amounts are paid; and (y) the date before the next subsequent Interest Payment Date; or (C) such period as EDC may in its discretion determine;

"KYC Requirements" means all of EDC's (and, if there is an actual or prospective lender hereunder other than EDC, such other lender's) financial crime, "know your customer" and other similar checks and identification procedures, as well as those required under all applicable laws and regulations, in relation to the Transaction Parties and any Loan and with respect to all relevant counterparties (as determined by EDC or, if applicable, such other lender in its sole discretion);

"Lien" means any mortgage, lien, claim, pledge, hypothecation, encumbrance, charge or other security interest granted or arising by operation or law with respect to the property of any person or any preferential arrangement that has the effect of security for any debt, liability or other obligations;

"Loan" has the meaning given to that term in section 2.2 (Borrowing);

"Loan Documents" means, collectively, this Agreement, the Security Documents and any other documents, agreements or instruments entered into in connection with any of the foregoing, and, individually, any one of them, as the context requires, in each case, as the same may from time to time be amended, varied, supplemented, restated, renewed or replaced;

"London Banking Day" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, England;

"Material Adverse Effect" means a material adverse change in or effect on: (a) the condition, financial or otherwise, earnings, operations, assets, business affairs or business prospects of any Transaction Parties taken as a whole (on a consolidated basis); (b) the ability of any Transaction Parties taken as a whole to perform their obligations under this Agreement; (c) the NAMCO Project; or (d) the legality, validity or enforceability of any Transaction Document or the rights and remedies available to EDC under this Agreement;

"Material Agreements" means all agreements which relate to the NAMCO Project including, but not limited to, NAMCO Project's PCM contract, and all renewals and replacements of any of them; (iii) any other contract, licence or agreement which if terminated could result in a Material Adverse Effect; (iv) or any other contract, licence or agreement designated as a material agreement by EDC from time to time, acting reasonably;

"Material Subsidiary" means (a) a Subsidiary that accounts for annual EBITDA in excess of USD 5,000,000, other than by means only of a payment to it of a dividend or distribution by a Subsidiary as part of repatriation of capital or profits to the Borrower and provided such payment remains with the Subsidiary for less than 90 days, and is not (i) a Transaction Party, (ii) incorporated and operating in China, or (iii) Buss & Buss Spezialmetalle GmbH;

"Maturity Date" means the date which falls five (5) years after of the date of this Agreement, provided that is such day is not a Business Day, in which case the Maturity Date shall be the next Business Day;

"Merger" has the meaning as set for in Section 8.1(j);

"Merger Target" has the meaning as set for in Section 8.1(j);

"NAMCO Project" means the relocation and upgrading of the existing NAMCO production facility (ZAMR) in Zibo, China to the NAMCO Project Site. The new facility shall be used for the purpose of processing separated rare earth oxides and shall have a targeted nameplate capacity of 5,500 tonnes per annum of mixed oxides for use in automotive catalytic converters and as further detailed in Neo Chemicals & Oxides, Catalyst Production Facility Relocation Project, Basic Design Report, prepared by Exyte, dated 15 June 2021 (Issue A). The NAMCO Project shall permanently replace the mixed oxides processing portion of the ZAMR facility;

"NAMCO Project Site" means Qilu Industrial Park, Linzi District, Zibo City, Shandong Province, China;

"PCBSS" means NAMCO Project's project control budget and spending schedule setting out the baseline capital expenditure budget and planned monthly expenditure for the entire NAMCO Project used by the Borrower to assess capital expenditure performance in respect of construction, commissioning, start-up and hand-over of the NAMCO Project. For avoidance of doubt, PCBSS includes all capital expenditures planned to be incurred by Neo Performance directly or indirectly through its contractors and suppliers in implementing the NAMCO Project, and is not limited to expenditures within the scope of the PCM contract;

"PCM" means procurement contract management;

"PCS" means NAMCO Project's project control schedule detailing the overall project implementation schedule that specifies level 1 activities, durations and milestones in respect of the NAMCO Project. For avoidance of doubt, PCS includes implementation schedule for work undertaken by the Borrower, PCM contractor and all other third party suppliers and contractors in respect of construction, commissioning, start-up and hand-over of the NAMCO Project, and is not necessarily limited to the schedule in the PCM contract;

"Permitted Additional Debt" means:

(a) New Indebtedness of the Transaction Parties which is expressly for the purpose of developing and constructing of a new manufacturing facility in Estonia in an aggregate amount not exceeding USD 50,000,000, provided that Indebtedness and Liens rank *pari passu* with the Commitment;

(b) New Indebtedness of a Transaction Party for the purposes of the acquisition of an Acquisition Target or Merger Target provided that (i) the aggregate amount does not exceed USD 30,000,000 and (ii) Indebtedness and Liens rank *pari passu* with the Commitment;

(c) New Indebtedness of Subsidiaries in an aggregate amount not exceeding USD 30,000,000;

(d) New Indebtedness of any Transaction Party owed to any other Subsidiary or other Transaction Party which is otherwise permitted pursuant to Section 8.7(c) hereof; and

(e) A pending trade finance facility from HSBC Bank (Singapore) in an amount not to exceed USD 10,000,000 in favour of Neo Performance Materials (Singapore) Pte. Ltd.;

"Permitted Debt" means:

(a) Indebtedness under this Agreement, or otherwise owing to EDC by the Transaction Parties;

(b) Indebtedness to or from any Affiliates disclosed on Schedule 8.1(n) hereto;

(c) Indebtedness under a guarantee or indemnity incurred in the ordinary course of business by any Transaction Party in respect of any other Subsidiary in respect of the payment of goods or services;

(d) The revolving credit facility from HSBC Bank (China) pursuant to the banking facilities agreement dated July 1, 2021, as amended by an amended agreement date November 9, 2021 (as may be further amended, restated, and replaced from time to time) in an amount not to exceed USD 30,000,000 in favour of the China Group and guaranteed by the Borrower;

(e) The revolving credit facility extended by Commerzbank to Buss & Buss Spezialmetalle GmbH pursuant to a credit line agreement of November 19<sup>th</sup>/27<sup>th</sup>, 2013 (as may be amended, restated, and replaced from time to time) in the amount not to exceed Euro 5,500,000;

(f) The term credit facility from OP Corporate Bank plc Eesti filiaal pursuant to a credit agreement dated December 23, 2021, as amended by Amendment No. 1 dated December 23, 2021 (as may be further amended, restated, and replaced from time to time) in the amount not to exceed Euro 7,000,000 held by NPM Silmet OÜ;

(g) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practices;

(h) Indebtedness in respect of overdraft protections and otherwise in connection with deposit accounts not to exceed an aggregate of USD 1,000,000;

(i) the China Group Bank Debt;

(j) Indebtedness consisting of (A) the financing of insurance premiums (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business or (C) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business, provided that (A),(B), and (C) do not exceed an aggregate of USD 2,000,000 at any time; and

(k) Permitted Additional Debt;

"Permitted Liens" means:

(a) carrier's, warehousemen's, mechanic's, materialmen's, repairmen's and other like Liens, arising both by operation of law and in the ordinary course of business;

(b) Liens in connection with purchase money indebtedness and capital leases otherwise permitted pursuant to this Agreement, provided that such Liens attach only to the assets purchased with the proceeds of such purchase money indebtedness or which are the subject of such capital leases, as the case may be;

(c) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not detract from the value of the affected property or interfere with the ordinary conduct of the business of the Borrower;

(d) banker's liens, rights of set-off or similar rights to deposit accounts or the funds maintained with a creditor depository institution;

(e) Liens created on property at the time of its purchase solely as security for the purchase price of such property, and any renewal thereof which is limited to the original property and to a renewal of the Indebtedness incurred to finance the purchase price thereof;

(f) Liens for accrued Taxes not yet due and owing, or Taxes being contested in good faith by appropriate proceedings and with respect to which proper reserves have been taken by the Transaction Party or any of their Subsidiaries;

(g) Liens in favour of EDC;

(h) Liens in favour of the secured parties with respect to Permitted Debt;

(i) all other Liens existing on and approved in writing by EDC prior to the date hereof; and

(j) any other Liens consented to in writing by EDC,

provided that, the inclusion of a Lien as a Permitted Lien does not constitute an acknowledgement by EDC that such Lien ranks prior to the Liens constituted by the Security Documents;

"Person" means any individual, corporation, limited liability company, voluntary association, partnership, joint venture, trust or Governmental Authority or other entity;

"Process Agent" has the meaning set forth in section 10.8 (Governing Law: Submission to Jurisdiction);

"Post-Default Rate" means, the rate per annum equal to the aggregate of 2% per annum and the rate of interest payable pursuant to section 3.2(a) (Interest);

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto;

"Request for Loan" means a notice substantially in the form set out in Exhibit "A", and satisfactory to EDC;

"Sanctioned Jurisdiction" means, at any time, a country, territory or geographical region which is itself the subject or target of any comprehensive Sanctions (including Belarus, Crimea region, Cuba, Donetsk region, Iran, Luhansk region, Libya, North Korea, Somalia, Sudan, South Sudan, Syria, and Zimbabwe);

"Sanctions" means economic or financial sanctions administered, enacted or enforced by any Sanctions Authority including without limitation, (i) any restriction on EDC's or any of its Subsidiaries' ability to conduct business with any Person in any country relevant to the transaction; (ii) pursuant to all applicable Canadian laws regarding sanctions and export controls (all such applicable laws currently in effect, all such new applicable laws in effect in the future or each as amended from time to time), such as the *United Nations Act*, *Special Economic Measures Act*, *Export and Import Permits Act*, *Freezing Assets of Corrupt Foreign Officials Act*, *Criminal Code*, *Defense Production Act*, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, *Anti-Terrorism Act* or any other similar Canadian statute or regulation; (iii) U.S.

Export Administration Regulations; (iv) U.S. Arms Export Control Act; and (v) U.S. International Traffic in Arms Regulations;

"Sanctions Authority" means:

- (a) Canada;
- (b) United Nations Security Council;
- (c) United States;
- (d) European Union;
- (e) the United Kingdom;
- (f) any other jurisdiction applicable to any Transaction Party or any Subsidiary or their respective operations; and/or
- (g) the respective governmental institutions, agencies and subdivisions of any of the foregoing, including, without limitation, Her Majesty's Treasury, Global Affairs Canada, OFAC, and the United States Department of State and any other relevant national or supra-national Governmental Authority with jurisdiction over any party to this Agreement;

"Sanctions Laws" means all laws, rules, regulations and requirements of any jurisdiction (including Canada, the United States, the United Kingdom, and the European Union) applicable to a Transaction Party and any of the Subsidiaries or their respective operations or any other party to the Loan Documents, concerning or relating to Sanctions, terrorism or money laundering, including sanctions and export controls (all such applicable laws currently in effect, all such new applicable laws in effect in the future or each as amended from time to time);

"Sanctions Target" means any Person: (a) that is the subject or target of any Sanctions; (b) that is designated on any of the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, the Sectoral Sanctions Identification List maintained by OFAC, the Entity Denied Persons and Unverified lists maintained and published by the Bureau of Industry and Security of the U.S. Department of Commerce, or on any Sanctions-related list maintained by the U.S. Department of State, the U.S. Department of Commerce or Global Affairs Canada; (c) located, organized or resident in a Sanctioned Jurisdiction that is, or whose government is, the subject or target of Sanctions; (d) which otherwise is, by public designation of the United Nations Security Council, the European Union, Her Majesty's Treasury, or any jurisdiction applicable to a Transaction Party and any of the Subsidiaries or their respective operations or any other party to the Loan Documents, the subject or target of any Sanctions; (e) with which any party to the Loan Documents, or a U.S. clearing bank processing US Dollar payments, is prohibited from dealing or otherwise engaging in any transaction by any Sanctions Laws; or (f) owned or Controlled by, or acting on behalf of, any such Person or Persons described in the foregoing subclauses (a)-(e);

"Search Report" means the report or list approved by EDC of all security interests in the Collateral in the relevant jurisdiction(s);

"Secured Transaction Parties" shall mean collectively the Borrower, Neo Performance Materials ULC, Neo Chemicals and Oxides LLC and Neo Magnequench Distribution LLC, and such other Transaction Party which grants EDC a security interest in its collateral, as may be required by EDC from time to time in its sole and absolute discretion;

"Security Agreement" means any general security agreement or security agreement now and in the future entered into by a Transaction Party in favour of EDC;

"Security Document(s)" means the agreement(s) attached to Exhibit "B" and the Subordination Agreements;

"Social Law" means any law, rule or regulation (including international treaty obligations) applicable in any jurisdiction in which a Transaction Party is incorporated, holds assets or operates concerning (i) labour, (ii) the regulation of industrial relations (between government, employers and employees), (iii) the regulation of occupational health and safety, (iv) the protection of public health and safety, (v) the regulation of public participation, (vi) the protection and regulations of ownership of land rights (both formal and traditional), immovable goods and intellectual and cultural property rights, (vii) the protection and empowerment of Indigenous peoples or ethnic groups, or (viii) the protection, restoration and promotion of cultural heritage;

"SOFR Rate" means, for any Interest Period the Adjusted Term SOFR or such other rate in effect in accordance with this Agreement;

"SOFR" means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate);

"Subordination Agreement(s)" means the subordination agreements in a form acceptable to EDC to be delivered to EDC from creditors of the Borrower identified in the Search Report;

"Subsidiary" means, with respect to any Person, any corporation more than 50% of the Voting Shares of which at the time of determination are owned, directly or indirectly, by that Person;

"Taxes" means all present or future taxes, levies, duties, deductions, withholdings, assessments, fees and other charges imposed by any Governmental Authority (other than any Governmental Authority in Canada), including income taxes, sales or value-added taxes, goods and services taxes, stamp taxes and royalties together with any fines, penalties and interest applicable thereto;

"Term SOFR" means, for the Applicable Tenor, the Term SOFR Reference Rate on the day (such day, the "Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such applicable Term SOFR Interest Period as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New

York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the Applicable Tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day;

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by EDC in its reasonable discretion);

"Term SOFR Reference Rate" means the per annum forward-looking term rate based on SOFR;

"Thailand Foreign Business License" shall have the meaning as set out in Section 8.1(s)(i);

"Transaction Documents" means this Agreement, the Security Documents, each Guarantee and all other documents delivered with respect thereto;

"Transaction Parties" means the Borrower and the Guarantors;

"Transaction Party's Country" means any of the following: Canada, Estonia, Singapore, Thailand, Germany, United States, United Kingdom, China or such other country applicable to any Transaction Party or any Subsidiary or where their respective operations are located;

"Transactions" means the transactions under or contemplated by Transaction Documents, including the making of Loans, the use of the proceeds thereof and the repayment of Loans;

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment;

"USD" means the currency of the United States of America;

"U.S. Base Rate" means, for any day, a rate per annum equal to the greatest of:

(a) the annual rate of interest announced from time to time by EDC as being its selected reference rate of interest then in effect for determining interest rates on USD demand loans in Canada in effect on such day;

(b) the rate of interest per annum for such day or, if such day is not a Business Day, on the immediately preceding Business Day, equal to the sum of the Federal Funds Rate (expressed for such purpose as a yearly rate per annum, on the basis of a year of 365 days, in accordance with Section 3.4), plus 1.00% per annum; and

(c) Adjusted Term SOFR for a one-month tenor in effect for such day plus 1.00% per annum; and

"Voting Shares" means shares of any class of any corporation, carrying voting rights generally under all circumstances.

## SCHEDULE 1.2

### ACCOUNTING TERMS AND DETERMINATIONS

1.1 Certain Defined Terms. In this Agreement, the following terms shall have the following meanings:

"Capital Expenditures" means, for any period, without duplication, the sum of:

(a) the gross amount of additions (excluding repair and maintenance and environmental costs and additions pursuant to capitalized leases) during such period to property, plant and equipment of the Borrower; plus

(b) the aggregate amount of Capitalized Lease Obligations incurred in such period (to the extent not included as a Capital Expenditure in any prior period) by the Borrower (excluding the portion thereof, if any, allocable to Interest Expense);

"Capitalized Lease Obligation" means with respect to a Person, at any time, the obligations of a Person to pay rent or other amounts under a lease (or agreement conveying the right to use) of property which would be required to be classified and accounted for as a capital lease on a balance sheet of such Person;

"Current Assets" means, as of the close of any Fiscal Quarter, all amounts (excluding cash and temporary cash investments) which would be included as current assets on a balance sheet of the Borrower at such time;

"Current Liabilities" means, as of the close of any Fiscal Quarter, all amounts which would be included as current liabilities on a balance sheet of the Borrower at such time (excluding current maturities of long-term Debt);

"Debt" of any Person means a liability which, in accordance with GAAP, would be classified as indebtedness of that Person, including, without limitation or duplication:

(a) any obligation for money borrowed and premiums (if any) and capitalized interest (if any) in respect thereof, whether or not evidenced by any debenture, bond, note or similar instrument;

(b) all obligations to pay deferred purchase price of property of services, except trade accounts payable arising in the ordinary course of business;

(c) liabilities in respect of any letter of credit, acceptance, bill discounting or note purchase facility and any receivables purchase, factoring or discounting arrangement which carries recourse to such Person;

(d) all obligations under capital leases;

(e) all obligations in respect of hedging agreements (excluding the B&B Derivative Obligations); and

(f) any other transaction having the commercial effect of: (i) a financial borrowing; or (ii) any other raising of money (other than by or in respect of the issue of equity securities), entered into by such Person to finance its operations or capital requirements;

(g) any liability referred to above against which the Person has agreed to protect a creditor from loss by guarantee, purchase or otherwise;

"Debt Service" means, for the Borrower for any period, the sum of:

(a) all regularly scheduled payments or prepayments of principal of Indebtedness (including, without limitation, the principal component of any payments in respect of Capitalized Lease Obligations) made during such period; plus

(b) all payments in respect of operating lease obligations made during such period; plus

(c) all Interest Expense for such period;

"Debt Service Coverage Ratio" means the ratio of:

(a) the aggregate amount of EBITDA for the period comprising the four (4) consecutive Fiscal Quarters ended on such date; to

(b) Debt Service for the same period;

"EBITDA" means, for the Borrower for any period, Net Income (before extraordinary or other non-recurring items) for such period:

(a) plus, to the extent deducted in determining Net Income for such period, the sum of:

(i) interest expense;

(ii) tax expense; and

(iii) depreciation, amortization and other non-cash charges;

(b) minus the gain (or plus the loss) on monetary correction to the extent reflected in Net Income for such period; and

(c) minus any non-cash credits for such period;

"Excess Cash Flow" shall mean for each of Borrower's Fiscal Years, Borrower's EBITDA for such period, minus Borrower's taxes during such period and any distributions to its shareholders in respect of Taxes for such period, minus interest payable during such period, minus actual

principal payments made with respect to long-term debt during such period, minus all unfinanced Capital Expenditures by Borrower during such period;

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

"Free Cash Flow" means, for any period, the sum of:

- (a) EBITDA for such period; less
- (b) Capital Expenditures made during such period; less
- (c) Taxes paid by the Borrower during such period.

The Borrower shall be permitted to add-back of Debt funded Capital Expenditures;

"Interest Expense" means, for any Fiscal Quarter, the aggregate expense of the Borrower for interest, commissions, discounts and other fees and charges incurred in connection with commitment fees, net costs or net benefits under rate swap agreements, other items characterized as interest expense in accordance with GAAP, and the portion of any interest expense payable with respect to Capitalized Lease Obligations;

"Leverage Ratio" means, as of the close of any Fiscal Quarter, the ratio of:

- (a) Debt on such date; to
- (b) the aggregate amount of EBITDA for the period comprising the four (4) consecutive Fiscal Quarters ended on such date,

provided that all cash held by the Transaction Parties shall be permitted to be netted against total Debt, with no limit. All cash held by each Subsidiary not a Transaction Party shall be permitted to be netted only to a maximum amount equivalent to drawn Debt held by such Subsidiary, other than in the case of the China Group which shall be netted on an aggregated basis within the China Group to a maximum amount equivalent to aggregate drawn Debt held by the China Group; and

"Net Income" means, for any Fiscal Quarter, all amounts which would be included as net earnings on the statements of earnings of the Borrower at such time, provided that in any event no such amounts shall include any gain or loss arising from the sale or disposition of any assets (other than: (x) inventory sold in the ordinary course of business; or (y) any gain or loss arising from the sale of disposition of obsolete assets in the ordinary course of business).

### SCHEDULE 3.1

#### REPAYMENT SCHEDULE

<b>Date</b>	<b>Opening Balance (USD)</b>	<b>Payment Amount (USD)</b>	<b>Ending Balance (USD)</b>
August 16, 2022	-	-	75,000,000
August 16, 2023	75,000,000	-	75,000,000
August 16, 2024	75,000,000	7,500,000	67,500,000
August 16, 2025	67,500,000	7,500,000	60,000,000
August 16, 2026	60,000,000	7,500,000	52,500,000
August 16, 2027	52,500,000	52,500,000	-

**SCHEDULE 7.1(p)**

## Subsidiaries

<b>Subsidiary</b>	<b>Jurisdiction</b>
MQ HPMG Europe OÜ	Estonia
Neo Cayman Holdings Ltd.	Cayman Islands
NPM C&O Europe OÜ	Estonia
Magnequench, LLC	Delaware, U.S.
Neo US Holdings, Inc.	Delaware, U.S.
Neo Chemicals & Oxides (Europe) Ltd.	United Kingdom
Neo Performance Materials (Singapore) Pte. Ltd.	Singapore
Magnequench Japan Inc.	Japan
Neo Performance Materials Korea Inc.	South Korea
NMT Holdings GmbH	Germany
Neo Performance Materials ULC	British Columbia, Canada
Magnequench Magnetics (Chu Zhou) Co., Ltd.	China
Neo International Corp.	Barbados
Neo Performance Materials (Beijing) Co., Ltd.	China
Magnequench Limited	Barbados
Magnequench GmbH	Germany
Buss & Buss Spezialmetalle GmbH	Germany
Neo Japan, Inc.	Japan
Jiangyin Jiahua Advanced Material Resources Co., Ltd.	China
Magnequench International Trading (Tianjin) Co., Ltd.	China
Neo Rare Metals (Korea) Inc.	South Korea
Zibo Shijia Trading Co., Ltd.	China
Magnequench (Korat) Co., Ltd.	Thailand
Magnequench Neo Powders Pte. Ltd.	Singapore
NPM Holdings (US), Inc.	Delaware, U.S.
Magnequench International, LLC	Delaware, U.S.
Neo Jia Hua Advanced Materials (Zibo) Co., Ltd.	China

NPM Silmet OÜ	Estonia
Neo Rare Metals (Oklahoma), LLC	Delaware, U.S.
Neo Rare Metals (USA), LLC	Utah, U.S.
Neo Chemicals and Oxides, LLC	Delaware, U.S.
Xin Bao Investments Limited	Hong Kong
Zibo Jiahua Advanced Material Resources Co., Ltd.	China
Zibo Jia Xin Magnetic Materials Ltd.	China (Inactive)
Neo Magnequench Distribution, LLC	Delaware, U.S.
Neo Water Treatment LLC	Delaware, U.S.
Magnequench (Tianjin) Company Limited	China

**SCHEDULE 8.1(p)(ii)**

Locations

<b>Transaction Party</b>	<b>Chief Executive Office/Location of Books</b>	<b>Place of Business</b>	<b>Collateral Locations</b>	<b>Collateral Consignee Locations</b>
Neo Performance Materials Inc.	1740-121 King Street West, Toronto, Ontario, M5H 3T9, Canada	N/A	N/A	N/A
Neo Chemicals and Oxides, LLC	8101 E. Prentice Avenue, Ste 525, Greenwood Village, Colorado, 80111, USA	8101 E. Prentice Avenue, Ste 525, Greenwood Village, Colorado, 80111, USA	<b>REDACTED – sensitive information</b>	<b>REDACTED – sensitive information</b>
Neo Magnequench Distribution, LLC	8101 E. Prentice Avenue, Ste 525 Greenwood Village, Colorado, 80111, USA	237 S. Pendleton Avenue, Pendleton, IN, 46064	<b>REDACTED – sensitive information</b>	<b>REDACTED – sensitive information</b>

**SCHEDULE 8.1(n)**  
Intercompany Loans

See Attached

Neo Performance Materials Inc.  
Summary of Intercompany Loans  
As at June 30, 2022

		Interco Borrower																			Total AR										
		EDC Borrower	EDC Guarantor									Non-Guarantor																			
(in USD 000's)	Inc.	MQ Gmbh	Neo C&O Europe	Neo C&O LLC	Neo MQ Dist LLC	Neo ULC (Toronto)	NMT GmbH	NPM Silmet	Neo Singapore	MQ Korat	JAMR	MQTJ1	MQTJ2	ZAMR	ZAMM	MQCZ	NAMCO	Xin Bao	MQJ LLC	MQ LLC		MQ Neo Powders	Neo RM Utah	NPM Holdings USA	Neo WT	MQ Barbados	NIC Barbados	Neo Cayman			
Interco Lender	EDC Borrower Inc.		3,704																										3,704		
	EDC Guarantor	MQ Gmbh																												-	
		Neo C&O Europe																													-
		Neo C&O LLC																													-
		Neo MQ Dist LLC																													-
		Neo ULC (Toronto)	7,743																												-
		NMT GmbH																													-
		NPM Silmet																													-
		Neo Singapore																													-
		MQ Korat																													-
		Non-Guarantor																													-
		JAMR																													-
		MQTJ1																													-
		MQTJ2																													-
		ZAMR																													-
		ZAMM																													-
	MQCZ																													-	
	NAMCO																													-	
	Xin Bao																													-	
	MQJ LLC																													-	
	MQ LLC																													-	
	MQ Neo Powders																													-	
	Neo RM Utah																													-	
	NPM Holdings USA																													-	
	Neo WT																													-	
	MQ Barbados	41,228																												-	
	NIC Barbados	31,900																												-	
	Neo Cayman	12,026																												-	
Total AP		105,093	3,704	-	33,737	-	-	5,041	18,168	10,102	-	15,221	6,052	-	-	75	5,684	19,003	-	-	26,340	-	-	16	2,132	-	3,848	4,792	259,009		

Exhibit "A" to the Loan Agreement No. 880-91456 made between NEO PERFORMANCE MATERIALS INC. and EXPORT DEVELOPMENT CANADA.

### REQUEST FOR LOAN

Re: Loan Agreement dated as of [**Date**] between Neo Performance Materials Inc. and Export Development Canada  
EDC Loan No. 880-91456

1. This Request for Loan is delivered to you pursuant to section 2.2 of the Loan Agreement (the "Agreement") made as of ●. All defined terms set forth in this Request for Loan shall have the respective meanings set forth in the Agreement.

2. We hereby request a Loan as follows:

(a) Proposed Borrowing Date:

(b) Amount of Loan:

(c) Intermediary Bank//Location/Account Number/SWIFT Code and Beneficiary/Location/Account Number/SWIFT Code (mandatory) for deposit:

3. We attach **BLANK** [documentation required for advance].

4. All of the representations and warranties contained in section 7 (Representations and Warranties) of the Agreement are true and correct on and as of the date hereof as though made on and as of the date hereof, unless such representation or warranty is made as of a specific date, then such is true and correct as of such date.

5. All of the covenants contained in section 8 (Covenants) of the Agreement have been performed in all material respects, and all of the other conditions precedent to the Loan requested hereby and all other terms and conditions contained in the Agreement to be complied with by the Borrower or any other Transaction Party have been met in all material respects.

6. There has occurred no Material Adverse Effect since the date of the last financial statements of the Borrower delivered to EDC.

7. No Default has occurred and is continuing nor will any Default occur as a result of the Loan being requested.

Dated this ● day of ●.

**NEO PERFORMANCE MATERIALS INC.**

Signature: \_\_\_\_\_

(Authorized Signing Officer)

(Print Name):

(Print Title):

Exhibit "B" to the Loan Agreement No. 880-91456 made between NEO PERFORMANCE MATERIALS INC. and EXPORT DEVELOPMENT CANADA.

**SECURITY DOCUMENT(S)**

1. General security agreement dated August 16, 2022 from the Borrower in favour of EDC.
2. General security agreement dated August 16, 2022 from Neo Performance Materials ULC in favour of EDC.
3. Security agreement dated August 16, 2022 from Neo Chemicals and Oxides, LLC and Neo Magnequench Distribution, LLC in favour of EDC.

Exhibit "C" to the Loan Agreement No. 880-91456 made between NEO PERFORMANCE MATERIALS INC. and EXPORT DEVELOPMENT CANADA.

**ENVIRONMENTAL AND SOCIAL ACTION PLAN**

**[REDACTED – sensitive information]**

Exhibit "D" to the Loan Agreement No. 880-91456 made between NEO PERFORMANCE MATERIALS INC. and EXPORT DEVELOPMENT CANADA.

### DISCLOSED LITIGATION

The following are the pending or ongoing litigation proceedings involving a Transaction Party which constitute the Disclosed Litigation:

<b>Patent Reference</b>	<b>Jurisdiction of Claim</b>	<b>Specified Damages by Claimant</b>
European patent 0863846 B1	Germany	\$8.7 million
European patent 0735984 B1	Germany	
European patent 0605274 B1	Germany	
Chinese patent ZL 96196505.3	China	\$7.1 million
European patent EP 3009403	Estonia	\$0.1 million
European & UK patents 1435338 B1	Germany	\$43.0 million
European & UK patents 1435338 B1	UK	Not specified
European patent 0955267	Germany	Not specified
European patent 1527018	Germany	Not specified
European patent 2007682	Germany	Not specified