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Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Defence to ~~Fourth~~ Fifth Amended Statement of Claim

No. NSD 602 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG and another named in the Schedule

First Applicant

Insurance Australia Limited and others named in the Schedule

Respondent

To the Applicants' (Greensill Bank AG (**Greensill Bank**) and Dr Michael Frege in his capacity as insolvency administrator for Greensill Bank) Fourth Amended Statement of Claim (**ASOC**) filed 14 April 2025, the Fourth Respondent, Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291) (**TMNF**), says as follows.

Preliminary matters

A. As pleaded further in **Annexure AA** and **Annexure A** to this Amended Defence, the Second Respondent, BCC Trade Credit Pty Ltd (**BCC**), alleges that it was induced to enter into the relevant insurance instruments by reason of non-disclosures and misrepresentations by or on behalf of Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Ltd (**GCUK**) (together, the **Greensill Group**) as to the underlying risks being presented to it for trade credit insurance throughout the relevant period. Given the nature of the matters in issue, discovery and compulsory disclosure will be sought by TMNF. In addition, TMNF continues to investigate the circumstances in which the Policy (as that term is defined in paragraph 65(a) of this Amended Defence) and its purported endorsements came to be issued, including but not limited to the conduct of the Greensill Group, and their agents, in procuring the same. Additional facts may come to light as a result of discovery, disclosure and further investigation, in which case a further amended Defence will be filed at an appropriate future time.

Filed on behalf of (name & role of party) Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Fourth Respondent
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B. Nothing in this pleading should be understood as an affirmation of any of the documents referred to herein, or as a waiver of any rights to argue that those documents are void or voidable. In particular, and without limiting the generality of the foregoing, all references in this pleading to the Policy and to any purported endorsement thereto should be read, where applicable, as though it was followed by the words 'if valid' in parentheses. TMNF does not admit that the Policy and its endorsements are valid, and to the extent that the pleading sets out coverage defences that are based on the wording of the Policy and its endorsements, it should be understood that those defences arise only in the alternative to TMNF's primary position that the Policy and its endorsements are invalid.

C. Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the ASOC where appropriate for convenience only.

A. PARTIES

1. TMNF admits paragraph 1 of the ASOC.

2. TMNF admits paragraph 2 of the ASOC.

3. TMNF admits paragraph 3 of the ASOC.

4. TMNF admits paragraph 4 of the ASOC.

5. In response to paragraph 5 of the ASOC, TMNF:

    a. admits subparagraph (a);

    b. admits subparagraph (b);

    c. admits subparagraph (c);

    d. admits subparagraph (d) insofar as it relates to IAL; and

    e. says, in response to subparagraph (d) insofar as it relates to IAGA, that:

        i. on 28 July 2017, Mr Brereton signed a document styled "Individual Authorisation Agreement" (**the IAGA Individual Authorisation Notice**);

        ii. the IAGA Individual Authorisation Notice referred to "BCC Trade Credit Pty Ltd [having] entered into an Authorised Representative Agreement with IAGA" (**the IAGA AAR Agreement**);

iii. it is not aware of the existence of an executed version of the IAGA AAR Agreement;

iv. in the premises, does not know and therefore cannot admit the paragraph insofar as it relates to IAGA;

f. as to subparagraph (e):

i. admits the paragraph insofar as it relates to IAL;

ii. says, insofar as the paragraph relates to IAGA, that it does not know and therefore cannot admit the paragraph; and

g. admits subparagraph (f) of the ASOC.

6. In response to paragraph 6 of the ASOC, TMNF:

a. says that on 11 March 2016, Mr Brereton entered into a contract of employment with Bond and Credit Company Pty Ltd (**Bond**) (**the Contract of Employment**) and was employed by Bond until 8 July 2020;

b. says that Mr Brereton's role was "Head of Trade Credit", but says that TMNF was not a party to the Contract of Employment, and that Mr Brereton was never an employee of BCC;

c. admits subparagraph (c);

d. as to subparagraph (d), admits that Mr Brereton had the authority that was conferred on him by the Brereton-CGU Authorisation Agreement;

e. as to subparagraph (e), admits that from 1 August 2017 to 30 June 2019 Mr Brereton was the responsible underwriting officer designated by IAL and an Authorised Representative appointed by CGU under the Brereton-CGU Authorisation Agreement, which was statutorily novated to IAL by virtue of the orders made by this Court on 20 July 2017 under s 17F(1) of the *Insurance Act 1973* (Cth); and

f. as to subparagraph (f), admits that Mr Brereton had the authority that was conferred on him by the Brereton-CGU Authorisation Agreement as statutorily novated to IAL; and

g. otherwise denies the paragraph.

6A. In response to paragraph 6A of the ASOC, TMNF:

a. says that from 11 March 2004, TMNF has held Australian Financial Services Licence (**AFSL**) number 246548;

b. says that from 20 October 2004, TMNF has been registered in Australia as a foreign company (overseas);

c. says that TMNF is in the business of providing non-life insurance; and

d. otherwise admits the paragraph.

6B-6C. TMNF does not plead to paragraphs 6B and 6C of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

B. AGENCY AGREEMENTS BETWEEN BCC AND IAL

B.1. Agency arrangements between CGU and BCC

7. TMNF admits paragraph 7 of the ASOC.

8. TMNF admits paragraph 8 of the ASOC.

9. TMNF admits paragraph 9 of the ASOC.

10. In response to paragraph 10 of the ASOC, TMNF:

a. admits subparagraph (a) of the ASOC;

b. admits subparagraph (b) of the ASOC;

c. relies on the terms of the CGU AAR Agreement and the Authorisation Notice for their full terms and effect; and

d. otherwise admits the paragraph.

11. TMNF admits paragraph 11 of the ASOC.

12. TMNF admits paragraph 12 of the ASOC.

13. TMNF admits paragraph 13 of the ASOC.

14. TMNF admits paragraph 14 of the ASOC.

15. In response to paragraph 15 of the ASOC, TMNF:

    a. says that BCC's authority to enter into trade credit insurance as CGU's agent was subject to the limitations on that authority contained in the CGU AAR Agreement, including the requirement in clause2.1(c) that entry into any trade credit insurance be in accordance with the Underwriting Manual; and

    b. otherwise admits the paragraph.

16. In response to paragraph 16 of the ASOC, TMNF:

    a. says that paragraph 16 is a paraphrase of clause 3.1(a) of the CGU AAR Agreement;

    b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

    c. otherwise admits the paragraph.

17. In response to paragraph 17 of the ASOC, TMNF:

    a. says that paragraph 17 is a paraphrase of clause 8.1 of the CGU AAR Agreement;

    b. says that the amounts that it was permitted to deduct from any payment of Premiums to CGU under clause 8.1 were any amounts due to it under clause 3.1, not only commissions;

    c. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

    d. otherwise admits the paragraph.

18. In response to paragraph 18 of the ASOC, TMNF:

    a. says that paragraph 18 is a paraphrase of clause 4.5(a) of the CGU AAR Agreement;

    b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

    c. otherwise admits the paragraph.

19. In response to paragraph 19 of the ASOC, TMNF:

a. says that paragraph 19 is a paraphrase of clause 4.5(b) of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

20. In response to paragraph 20 of the ASOC, TMNF:

a. says that paragraph 20 is a paraphrase of clause 7 of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

21. In response to paragraph 21 of the ASOC, TMNF:

a. says that paragraph 21 is a paraphrase of section 2, page 9 of the Underwriting Manual Version 1.0;

b. refers to the relevant terms of the Underwriting Manual Version 1.0 for their full force and effect; and

c. otherwise admits the paragraph.

B.2. Transfer of CGU's business to IAL

22. In response to paragraph 22 of the ASOC, TMNF:

a. refers to the order of the Federal Court of Australia made on 20 July 2017, including Annexure A thereto, which contained the terms of the scheme for the transfer of the insurance business of CGU to IAL, for their full terms and effect; and

b. otherwise admits the paragraph.

23. In response to paragraph 23 of the ASOC, TMNF:

a. refers to and repeats paragraph 22 of this Defence;

b. otherwise admits the paragraph.

B.3. Agency arrangements between BCC and IAL

24. TMNF admits paragraph 24 of the ASOC.

25. TMNF admits paragraph 25 of the ASOC.

26. In response to paragraph 26 of the ASOC, TMNF:

    a. admits that IAL permitted BCC to act on its behalf pursuant to the CGU AAR Agreement and Authorisation Notice;

    b. relies on the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

    c. otherwise does not know and therefore cannot admit the paragraph.

27. TMNF does not know and therefore cannot admit paragraph 27 of the ASOC.

28. In response to paragraph 28 of the ASOC, TMNF:

    a. relies on the terms of the letter for their full force and effect; and

    b. otherwise admits the paragraph.

29. In response to paragraph 29 of the ASOC, TMNF:

    a. says that the To Whom It May Concern Letter stated that BCC was arranging insurance under an authority provided by IAL and acts as an Authorised Representative of IAGA;

    b. relies on the terms of the letter for their full force and effect; and

    c. otherwise denies the paragraph.

30. In response to paragraph 30 of the ASOC, TMNF:

    a. says that the allegation that the To Whom It May Concern Letter was a “continuing representation” for an unspecified period of time is ambiguous and embarrassing, and liable to be struck out; and

    b. under cover of that objection, denies the paragraph.

31. In response to paragraph 31 of the ASOC, TMNF:

a. says that paragraph 31 is a paraphrase of section 2, pages 9 and 10 of the Underwriting Manual Version 2.0;

b. refers to the relevant terms of the Underwriting Manual Version 2.0 for their full force and effect; and

c. otherwise admits the paragraph.

32. In response to paragraph 32 of the ASOC, TMNF:

a. says that paragraph 32 is a paraphrase of section 1, pages 8 and 9 of the Underwriting Manual Version 3.0;

b. refers to the relevant terms of the Underwriting Manual Version 3.0 for their full force and effect; and

c. otherwise admits the paragraph.

33. TMNF admits paragraph 33 of the ASOC.

34. In response to paragraph 34 of the ASOC, TMNF:

a. says that paragraph 34 is a paraphrase of clause 2.1(c) of the IAL AAR Agreement;

b. refers to the relevant terms of the IAL AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

35. In response to paragraph 35 of the ASOC, TMNF:

a. admits that in the period 9 April 2019 to 30 June 2019, BCC was an authorised representative of IAL for the purposes of Chapter 7 of the Corporations Act;

b. admits that BCC's authority so to act in that period was regulated by, and subject to the limitations contained in, the IAL AAR Agreement;

c. denies that the CGU AAR Agreement (as transferred) continued to have effect from 9 April 2019, but says instead that the IAL AAR Agreement superseded and terminated the CGU AAR Agreement from that date onwards;

Particulars

IAL AAR Agreement, cl 20.9(a).

d. refers to the relevant terms of the instruments pleaded to in paragraph 35 for their full force and effect; and

e. otherwise admits the paragraph.

36. In response to paragraph 36 of the ASOC, TMNF:

a. says that its authority to issue and vary trade credit insurance as IAL's agent was subject to the limitations on that authority contained in the CGU AAR Agreement and IAL AAR Agreement; and

b. otherwise admits the paragraph.

B.4. Agency arrangements between BCC, IAL and Tokio Marine

37. TMNF admits paragraph 37 of the ASOC.

38. In response to paragraph 38 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the PACAO to which it refers;

b. refers to the relevant terms of the PACAO for their full force and effect; and

c. otherwise admits the paragraph.

39. TMNF admits paragraph 39 of the ASOC.

B.5. BCC administered trade credit insurance policies as agent for IAL

40. In response to paragraph 40 of the ASOC, TMNF:

a. admits that on and from 1 August 2017, BCC periodically provided IAL with bordereaux in the form of an Excel spreadsheet providing details of trade credit insurance policies written on behalf of IAL (the **Bordereaux**); and

b. otherwise denies the paragraph.

41. TMNF admits paragraph 41 of the ASOC.

42. TMNF admits paragraph 42 of the ASOC.

43. In response to paragraph 43 of the ASOC, TMNF:

a. says that the allegation is ambiguous and embarrassing in that it does not identify the 'trade credit insurance policies' the subject of the allegation;

b. under cover of that objection:

i. admits that, it remitted premiums to IAL in respect of trade credit insurance for which IAL was the named insurer; and

ii. otherwise denies the paragraph.

44. In response to paragraph 44 of the ASOC, TMNF:

a. says that the allegation is ambiguous and embarrassing in that it does not identify the 'trade credit insurance policies' the subject of the allegation;

b. under cover of that objection:

i. admits that it received commission in respect of trade credit insurance for which IAL was the named insurer; and

ii. otherwise denies the paragraph.

45. In response to paragraph 45 of the ASOC, TMNF:

a. admits that IAL permitted BCC to act on its behalf pursuant to the CGU AAR Agreement and Authorisation Notice and IAL AAR Agreement;

b. relies on the CGU AAR Agreement and Authorisation Notice and IAL AAR Agreement for their full force and effect; and

c. otherwise does not know and therefore cannot admit the paragraph.

C. AGENCY ARRANGEMENTS BETWEEN GREG BRERETON, CGU AND IAL

C.1. Agency arrangements between Greg Brereton and CGU

46. TMNF admits paragraph 46 of the ASOC.

47. In response to paragraph 47 of the ASOC, TMNF:

a. says that pursuant to the Brereton CGU Authorisation, CGU authorised Mr Brereton to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of CGU and for that purpose it appointed Mr Brereton as its

authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 8 July 2016);

b. relies on the terms of the Brereton CGU Authorisation for its full terms and effect; and

c. otherwise admits the paragraph.

48. TMNF admits paragraph 48 of the ASOC.

49. In response to paragraph 49 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Brereton CGU Authorisation to which it refers;

b. relies on the relevant terms of the Brereton CGU Authorisation for their full force and effect; and

c. otherwise admits the paragraph.

50. In response to paragraph 50 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Brereton CGU Authorisation and the CGU AAR Agreement to which it refers;

b. relies on the Brereton CGU Authorisation and the CGU AAR Agreement for their full terms and effect; and

c. otherwise admits the paragraph.

51. In response to paragraph 51 of the ASOC, TMNF:

a. admits that CGU authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement and the Brereton CGU Authorisation in the manner authorised by those instruments;

b. relies on the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

c. otherwise admits the paragraph.

52. In response to paragraph 52 of the ASOC, TMNF:

a. says that paragraph 52 is a paraphrase of section 2, page 9 of the Underwriting Manual Version 1.0;

b. refers to the relevant terms of the Underwriting Manual Version 1.0 for their full force and effect; and

c. otherwise admits the paragraph.

C.2. Agency arrangements between Greg Brereton, IAL and IAGA

53. TMNF admits paragraph 53 of the ASOC.

54. In response to paragraph 54 of the ASOC, TMNF:

a. says that on 29 January 2016, IAGA (which at that time was named Allied Global Underwriting Pty Ltd) became a wholly owned subsidiary of CGU;

b. says that at all material times until its deregistration on 15 April 2019, CGU was a subsidiary of Insurance Australia Group Limited; and

c. otherwise admits the paragraph.

55. TMNF admits paragraph 55 of the ASOC.

56. TMNF admits paragraph 56 of the ASOC.

57. In response to paragraph 57 of the ASOC, TMNF:

a. says that the Brereton IAGA Authorisation applied only to 'Approved Products' as defined in the IAGA AAR Agreement;

b. refers to and repeats paragraph 5(e) of this Defence and says that it does not know if the IAGA AAR Agreement was executed;

c. will refer to the Brereton IAGA Authorisation for its full terms and effect; and

d. otherwise does not know and therefore cannot admit the paragraph.

58. TMNF does not know and therefore cannot admit paragraph 58 of the ASOC.

59. In response to paragraph 59 of the ASOC, TMNF:

a. refers to and repeats paragraph 57 of this Defence;

b. says that the paragraph is a paraphrase of the clauses of the Brereton IAGA Authorisation to which it refers;

c. relies on the Brereton IAGA Authorisation for its full terms and effect; and

d. otherwise does not know and therefore cannot admit the paragraph.

60. In response to paragraph 60 of the ASOC, TMNF:

a. refers to and repeats paragraph 57 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

61. In response to paragraph 61 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the document styled "Delegated Authority for Head of Trade Credit effective 1st July 2018" (**Delegated Authority**) to which it refers;

b. relies on the Delegated Authority for its full force and effect; and

c. otherwise admits the paragraph.

62. In response to paragraph 62 of the ASOC, TMNF:

a. says that paragraph 62 is a paraphrase of section 2, pages 9 and 10 of the Underwriting Manual Version 2.0;

b. refers to the relevant terms of the Underwriting Manual Version 2.0 for their full force and effect; and

c. otherwise admits the paragraph.

63. TMNF admits paragraph 63 of the ASOC.

64. In response to paragraph 64 of the ASOC, TMNF:

a. as to IAL:

i. admits that IAL authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement (as transferred to IAL) and the Brereton CGU Authorisation (as transferred to IAL) in the manner authorised by those instruments;

ii. relies on the CGU AAR Agreement and Brereton CGU Authorisation for their full terms and effect; and

iii. otherwise does not know and therefore cannot admit the paragraph;

b. as to IAGA:

i. refers to and repeats paragraphs 57 of this Defence; and

ii. otherwise does not know and therefore cannot admit the paragraph.

DA. REGULATORY REQUIREMENTS

DA1. Membership of the German Deposit Protection Fund

4A–64Q. In response to paragraphs 64A to 64Q of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

DA2. Capital Requirements Regulation (EU) No. 575/2013

64R–64Z. In response to paragraphs 64R to 64Z of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

D. THE POLICY

D.1. Entry into the Policy

65. In response to paragraph 66 of the ASOC, TMNF:

a. admits that on or about 25 June 2019, Mr Brereton signed a document styled 'Comprehensive Trade Credit Insurance Policy TB-05369' which listed as its parties GCPL, Greensill Bank, and "BCC TRADE CREDIT PTY LTD with its registered office at Level 16, 347 Kent Street, Sydney NSW 2000, CORPORATE AUTHORISED REPRESENTATIVE OF INSURANCE AUSTRALIA LTD (ABN: 11000016722; AFSL: 238 291)" (**the Policy**);

b. says that on or about 25 June 2019, Mr Brereton signed a document styled 'Comprehensive Trade Credit Insurance Policy TB-05370' which listed as its parties GCPL, GCUK, and "BCC TRADE CREDIT PTY LTD with its registered office at Level 16, 347 Kent Street, Sydney NSW 2000, CORPORATE AUTHORISED REPRESENTATIVE OF INSURANCE AUSTRALIA LTD (ABN: 11000016722; AFSL: 238 291)" (**Liberty Delta Master Policy**);

c. says that the Policy and the Liberty Delta Master Policy contained substantially the same terms save for the identity of the insureds, the deductible or percentage insured, and the premium payable;

d. says that the binding of risks under the Liberty Delta Master Policy and Policy occurred as part of the provision of a single program of insurance by BCC to the Greensill Group which involved binding risks under both the Liberty Delta Master Policy and the Policy;

e. says that:

i. the CGU AAR Agreement required policies written by BCC as corporate representative of IAL to be in accordance with the Underwriting Guidelines as in force from time to time;

ii. the policy wording for the Policy was not consistent with the wording specified in the then current Underwriting Guidelines;

Particulars

The relevant Underwriting Guidelines (referred to as 'Underwriting Manuals' in the CGU AAR Agreement) at the time the Policy was written was the version dated 13 July 2018 [TOK.001.00129459].

iii. TMNF does not know whether IAL otherwise approved and authorised the wording used by Mr Brereton in underwriting the Policy; and

iv. TMNF does not know whether IAL subsequently ratified and authorised Mr Brereton's actions in executing the Policy on its behalf; and

f. by reason of the matters pleaded in paragraph 65(e) of this Defence, otherwise does not know and therefore cannot admit the paragraph.

66. [Not used]

66A. In response to paragraph 66A of the ASOC, TMNF:

a. repeats paragraph 65 above;

b. admits that Greensill Bank's representatives signed the Policy on or about 14 March 2019; and

c. otherwise does not admit the paragraph.

67. In response to paragraph 67 of the ASOC, TMNF:

a. admits that "Insured" is defined in the Policy to mean GCPL and Greensill Bank;

b. says that the Policy (if valid) was a single policy of insurance under which Greensill Bank and GCPL were co-insureds; and

c. otherwise denies the paragraph.

68. In response to paragraph 68 of the ASOC, TMNF:

a. admits that "Insurer" was defined in the Policy to mean IAL;

b. says that by reason of the matters pleaded in paragraph 65 of this Defence, TMNF does not know and therefore cannot admit whether IAL entered into the Policy and/or its purported endorsements by its or Mr Brereton's conduct;

c. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC; and /or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into the Policy or any purported endorsement thereto (which is not admitted), and IAL or BCC thereby assumed any risk or liability under those instruments, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into those agreements and/or assumed that risk or liability by reason of the information provided by the Greensill Group when procuring the cover (as pleaded further below) and the misrepresentations and non-disclosures by the Greensill Group pleaded in Annexure AA and/or Annexure A to this Defence (the **Prior Misrepresentations and Non-Disclosures**).

69. TMNF admits paragraph 69 of the ASOC.

70. In response to paragraph 70 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 68 of this Defence;

b. says that the original Policy Period of the Policy was 26 June 2019 to 26 June 2021;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

71. TMNF admits paragraph 71 of the ASOC.

72. TMNF admits paragraph 72 of the ASOC.

D.2. Key terms of the Policy

73. In response to paragraph 73 of the ASOC, TMNF:

a. admits subparagraph (a);

b. admits subparagraph (b);

c. admits subparagraph (c);

d. admits subparagraph (d);

e. admits subparagraph (e);

f. admits subparagraph (f);

g. admits subparagraph (g);

h. admits subparagraph (h);

i. in relation to subparagraph (i):

i. says that 'Debt' was defined to mean, as the context requires, a debt of the type described in the relevant 'Debt Endorsement';

ii. says that 'Debt Endorsement' was defined to mean an endorsement to the Policy that describes the nature of a debt that is after the date of such endorsement able to be a 'Debt' for the purpose of the Policy, and which may contain amendments to the terms of the Policy in so far as the Policy relates to such 'Debts' and 'Assets' derived therefrom; and

iii. says that relevant Debt Endorsement relied upon by Greensill Bank in making the claim under the Policy the subject of the proceeding is the document described as 'Endorsement 1' dated 25 June 2019 (**Debt Endorsement 1**); and

iv. otherwise denies the paragraph;

j. in relation to subparagraph (j);

i. refers to and repeats paragraph 73(i) of this Defence; and

ii. otherwise denies the paragraph;

k. admits subparagraph (k);

l. in relation to subparagraph (l):

i. says that Schedule 7 provided that the Debt was required to meet the following criteria at the time of the acquisition of the relevant Asset by the Insured:

A. the obligor (being the Customer) of the Debt was not an Affiliate of any of the parties to the Transaction Documents (other than any Origination Documentation);

B. the obligor of the Debt is a corporate entity and not an individual or sole trader or partnership;

C. the obligor of the Debt is not Insolvent, which term was defined to mean in respect of an entity any corporate action, legal proceedings or other procedure or step taken for its winding up, dissolution, liquidation, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, custodian, trustee or similar officer in respect of such entity or all or a substantial part of its revenues and assets (or any analogous procedure or step taken in any jurisdiction);

D. the obligor of the Debt has a Customer Limit established in accordance with the terms of the Policy;

E. the Due Date of the Debt does not exceed the Maximum Tenor;

F. the Debt is not outstanding after its Due Date; and

G. the debt satisfied any further criteria set out in the relevant Debt Endorsement relating to the Debt;

ii. says that the form of Debt Endorsement appended to the Policy further required that the Eligible Debt arises under a Customer Agreement that is in full force and effect and to the best of the Insured's knowledge, after reasonable due diligence, constitutes the legal, valid and binding obligation of the Customer enforceable against such Customer in accordance with its terms, subject to no offset, counterclaim, defence or other adverse claim; and

iii. otherwise denies the paragraph;

m. admits subparagraph (m);

n. admits subparagraph (n);

o. admits subparagraph (o);

p. admits subparagraph (p);

q. admits subparagraph (q);

r. in relation to subparagraph (r):

i. refers to and repeats paragraph 70 of this Defence; and

ii. otherwise admits the paragraph;

s. admits subparagraph (s);

t. admits subparagraph (t); and

u. otherwise refers to and repeats paragraph 65 of this Defence, and relies on the terms of the Policy for their full force and effect.

74. In response to paragraph 74 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

b. says that on the proper construction of the Policy, IAL agreed, subject to the terms, conditions and limitations of the Policy, to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by and resulting from the occurrence of an Insured Cause;

c. says that the terms, conditions and limitations of the Policy included the following:

i. that the Insured acknowledges and agrees that it has a duty to IAL of fair presentation in respect of the Policy and the risks insured thereunder (cl 7.1);

ii. that IAL was not liable to indemnify the Insured in respect of any Loss in respect of which the Insured has failed to comply with its obligations under the Policy where such failure has a 'Material Policy Impact' (cl 9.7); and

iii. that if the Insured makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, the policy may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements reports or Claim shall be forfeited (cl 15.4);

d. relies on the terms of the Policy for their full force and effect; and

e. otherwise denies the paragraph.

75. In response to paragraph 75 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 74 of this Defence;

b. admits that cl 4.1 of the Policy provided that IAL's liability to indemnify the Insured for a Loss shall, subject to the terms, conditions and limitations of the Policy, apply only in respect of Assets owned by the Insured (or a Loss Payee) during the Policy Period;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

76. In response to paragraph 76 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. admits that cl 4.1 of the Policy contained a term to the effect pleaded in that paragraph;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

77. In response to paragraph 77 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. says that cl 10 of the Policy set out the claims procedure for Claims under the policy;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

78. In response to paragraph 78 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. says that cl 14 of the Policy set out the relevant addresses for notices under the policy, and nominated BCC's address (attention to Mr Brereton) as the address for service of notices on IAL, unless otherwise notified by IAL;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

79. In response to paragraph 79 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. says that cl 5.5 of the Policy set out when Assets would attach to the policy;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

80. In response to paragraph 80 of the ASOC, TMNF:

a. says that Schedule 6 of the Policy, under the heading Discretionary Credit Limit, provided that the Discretionary Credit Limit was to be written by GCUK for use under both the Liberty Delta Master Policy and the Policy;

b. says that "Discretionary Credit Limit" was defined in the Liberty Delta Master Policy to mean the limit for the Customer or Customer Group established by the insured provided that such limit does not exceed the amount set out by the Insurer from time to time in Schedule 6;

c. says that Schedule 6 of both the Liberty Delta Master Policy and the Policy set out the amount of EUR2,000,000;

d. relies on the terms of the Liberty Delta Master Policy and the Policy for their full force and effect; and

e. does not know and therefore cannot admit whether GCUK in fact established a Discretionary Credit Limit for the Liberty Delta Master Policy.

81. In response to paragraph 81 of the ASOC, TMNF:

a. refers to and repeats paragraphs 73.h) and 73.q) of this Defence;

b. says that the Maximum Limit of Liability was defined in the Policy to mean, subject to clause 5.4 of the Policy, the amount specified in Schedule 6, as updated from time to time being the maximum aggregate amount of Losses arising in relation to Assets acquired by the Insured (or a Loss Payee) during the Policy Period that the Insurer may be required to indemnify the Insured under the Policy;

c. says that the Customer Limit was defined in the Policy as meaning, in respect of a Customer, the amount recorded in an Endorsement to the Policy, and which is the Insurer's maximum liability for the aggregate of all Losses insured under the Policy for the Customer;

d. says that the maximum limit of liability under the Policy for a particular Customer is the amount recorded as the Customer Limit in the Customer Endorsement for that Customer;

e. relies on the terms of the Policy for their full force and effect; and

f. otherwise admits the paragraph.

82. In response to paragraph 82 of the ASOC, TMNF:

a. refers to and repeats paragraph 81 of this Defence;

b. relies on the terms of the Policy for their full force and effect; and

c. otherwise admits the paragraph.

D.3. BCC had authority to enter into the Policy

(A) Actual authority

83. In response to paragraph 83 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

(B) Ostensible authority

83A–83CC. TMNF does not plead to paragraphs 83A to 83CC of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

84. In response to paragraph 84 of the ASOC:

a. says that the existence of the alleged ostensible authority depends upon IAL having made a representation to the relevant third party; and

b. in the premises, does not know and therefore cannot admit the paragraph.

(C) Statutory responsibility

85. In response to paragraph 85 of the ASOC, BBC:

a. admits that:

i. from 1 August 2017 to 30 June 2019, BCC was an authorised representative of IAL; and

ii. on and from 1 July 2019, BCC continued to administer trade credit insurance products arranged by BCC and issued by IAL pursuant to the PACAO;

b. admits that to the extent BCC was authorised to act as IAL's representative or agent in the circumstances identified in paragraph 82(a) of this Defence, it was a representative of IAL as that term is defined in s 910 of the Corporations Act;

c. admits that the conduct alleged at paragraph 85 of the ASOC related to the provision of a financial service;

d. denies that Greensill Bank could reasonably be expected to rely on that conduct and did, in fact, rely in good faith on that conduct, by reason of the Prior Misrepresentations and Non-Disclosures; and

e. otherwise does not know and therefore cannot admit the paragraph.

D.4. Greg Brereton had authority to enter into the Policy

86. In response to paragraph 86 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 83 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

87. In response to paragraph 87 of the ASOC, TMNF:

a. refers to and repeats paragraph 84 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

88. In response to paragraph 88 of the ASOC, TMN :

a. refers to and repeats paragraph 85 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

D.5. Endorsement 2

89. In response to paragraph 89 of the ASOC, TMNF:

a. admits that on or about 25 June 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 2 and which purported to vary the terms of the Policy;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

c. refers to and repeats paragraph 65 of this Defence;

d. further and alternatively, says that the document was not an 'Endorsement' within the meaning of the Policy and did not validly vary the Policy as:

i. the Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, clause 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party, and the document signed on 21 June 2019 was not signed on behalf of GCPL or Greensill Bank (and for the avoidance of doubt, Greensill Bank is hereby notified by this Defence that any authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution by any other party); and

e. otherwise denies the paragraph.

90. In response to paragraph 90 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 89 of this Defence; and

b. otherwise denies the paragraph.

91. In response to paragraph 91 of the ASOC, TMNF:

a. refers to and repeats paragraph 89 of this Defence; and

b. otherwise denies the paragraph.

92. In response to paragraph 92 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the sections of the document styled 'Endorsement 2' to which it refers;

b. refers to the terms of the document styled 'Endorsement 2' for their full force and effect; and

c. otherwise denies the paragraph.

D.6. BCC had authority to execute Endorsement 2

93. In response to paragraph 93 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 83 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

94. In response to paragraph 94 of the ASOC, TMNF:

a. refers to and repeats paragraph 85 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 94 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D.7. Greg Brereton had authority to execute Endorsement 2

95. In response to paragraph 95 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 86 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

96. In response to paragraph 96 of the ASOC, TMNF:

a. refers to and repeats paragraph 88 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 96 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D.8. Endorsement 3 to the Policy

97. In response to paragraph 97 of the ASOC, TMNF:

a. admits that on or about 16 September 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 3 and which purported to vary the terms of the Policy;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

c. refers to and repeats paragraph 65 of this Defence;

d. further and alternatively, says that the document was not an 'Endorsement' within the meaning of the Policy and did not validly vary the Policy as:

i. the Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, cl 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party, and the document signed on 21 June 2019 was not signed on behalf of GCPL or Greensill Bank (and for the avoidance of doubt, Greensill Bank is hereby notified by this Defence that any authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution by any other party); and

e. otherwise denies the paragraph.

98. In response to paragraph 98 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 97 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

99. In response to paragraph 99 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 97 of this Defence; and

b. otherwise denies the paragraph.

100. In response to paragraph 100 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the sections of the document styled 'Endorsement 3' to which it refers;

b. refers to the terms of the document styled 'Endorsement 3' for their full force and effect; and

c. otherwise denies the paragraph.

D.9. BCC had authority to execute Endorsement 3

101. In response to paragraph 101 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 83 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

102. In response to paragraph 102 of the ASOC, TMNF:

a. refers to and repeats paragraph 85 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 102 of the ASOC; and

b. otherwise denies the paragraph.

102A. In response to paragraph 102A of the ASOC, TMNF:

a. says that Endorsement 3 was not, and did not purport to be, an endorsement to a policy of insurance issued by TMNF but was an endorsement to a policy of insurance issued by IAL;

b. says that BCC and/or Brereton made a disclosure for the purposes of s 917D(b) and (c) of the Corporations Act when executing the relevant policies and endorsements,

by disclosing that BCC was acting not on behalf of TMNF but on behalf of another Licensee, being IAL;

c. denies that Greensill Bank could reasonably be expected to rely on that conduct and did, in fact, rely in good faith on that conduct, by reason of the Prior Misrepresentations and Non-Disclosures; and

d. [Not used]

e. otherwise denies the paragraph.

D.10. Greg Brereton had authority to execute Endorsement 3

103. In response to paragraph 103 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 86 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

104. In response to paragraph 104 of the ASOC, TMNF:

a. refers to and repeats paragraph 88 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 104 of the ASOC; and

b. otherwise denies the paragraph.

104A. In response to paragraph 104A of the ASOC, TMNF:

a. refers to and repeats paragraph 102A of this Defence; and

b. otherwise denies the paragraph.

E. THE LIBERTY DELTA TRANSACTIONS

E.1. Parties to the transactions

105. TMNF admits paragraph 105 of the ASOC.

106. TMNF admits paragraph 106 of the ASOC.

107. TMNF admits paragraph 107 of the ASOC.

108. TMNF admits paragraph 108 of the ASOC.

E.2. The Delta IPAs

109A. In respect of paragraphs 109–141 and 154–164 of the ASOC, TMNF says generally that:

a. it was not, and is not alleged to be, a party to the documents identified in those paragraphs;

b. Greensill Bank does not allege (and TMNF would not be in a position to admit, in any event) that paragraphs 109–141 and 154–164 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents; and

c. TMNF will seek disclosure in relation to the matters the subject of paragraphs 109–141 and 154–164 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced.

109. TMNF admits paragraph 109 of the ASOC.

110. In response to paragraph 110 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the agreements to which it refers (**the Delta IPAs**);

b. says that the term "Payable" was defined in the Delta IPAs as meaning payments which the Customer (that is, the relevant Delta HoldCo) may wish to make from time to time in respect of certain of its business transactions;

c. refers to the terms of the Delta IPAs for their full force and effect; and

d. otherwise admits the paragraph.

111. TMNF admits paragraph 111 of the ASOC.

112. TMNF does not know and therefore cannot admit paragraph 112 of the ASOC.

113. TMNF does not plead to paragraph 113 of the ASOC, which contains no allegation against it, but says that it likewise refers to those four entities as the **Delta OpCos** in this pleading.

114. TMNF admits paragraph 114 of the ASOC.

115. In response to paragraph 115 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Delta IPAs to which it refers;

b. says that under the Delta IPAs a Delta HoldCo was only entitled to submit a Drawdown File which set out a Drawdown Amount if it intended to use the Drawdown Amount to make payments in respect of certain of its business transactions;

c. refers to the terms of the Delta IPAs for their full force and effect; and

d. otherwise admits the paragraph.

E.3. Delta IPA Side Letters

116. TMNF admits paragraph 116 of the ASOC.

117. In response to paragraph 117 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 1 of the agreements to which it refers (**the Delta IPA Side Letters**);

b. says that the effect of clause 1 of the Delta IPA Side Letters is that the full amount of the initial Drawdown Amount was loaned by GCUK to each Delta HoldCo on a term basis without any reference or regard to amounts actually owed to the Acquired Group (as defined in the Delta IPA Side Letters) by any Account Debtors;

c. refers to the terms of the Delta IPA Side Letters for their full force and effect; and

d. otherwise admits the paragraph.

118. In response to paragraph 118 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clause 7 of the Delta IPA Side Letter;

b. refers to the terms of the Delta IPA Side Letters for their full force and effect; and

c. otherwise admits the paragraph.

E.4. Amendments to Delta IPAs

119. In response to paragraph 119 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the agreement to which it refers (**the Liege IPA Amendment Agreement**);

b. refers to the terms of the Liege IPA Amendment Agreement for their full force and effect; and

c. otherwise admits the paragraph.

120. In response to paragraph 120 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the agreement to which it refers (**the Galati IPA Amendment Agreement**);

b. refers to the terms of the Galati IPA Amendment Agreement for their full force and effect; and

c. otherwise admits the paragraph.

121. In response to paragraph 121 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the agreement to which it refers (**the Ostrava IPA Amendment Agreement**);

b. refers to the terms of the Ostrava IPA Amendment Agreement for their full force and effect; and

c. otherwise admits the paragraph.

122. In response to paragraph 122 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the letters to which it refers;

b. refers to those letters for their full force and effect; and

c. otherwise admits the paragraph.

E.5. IPA Supplementary Letters

123. TMNF admits paragraph 123 of the ASOC.

124. In response to paragraph 124 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 3 of the agreements to which it refers (**IPA Supplementary Letters**);

b. refers to the IPA Supplementary Letters for their full force and effect; and

c. otherwise admits the paragraph.

125. In response to paragraph 125 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 4 of the IPA Supplementary Letters;

b. says that the effect of clauses 3 and 4 of the IPA Supplementary Letters is that from 20 May 2020:

i. the Delta HoldCos were not required to submit Drawdown Files to maintain funding under the Delta IPAs;

ii. the Delta IPAs were operated in fact as a term loan without any reference or regard to amounts actually owed by Account Debtors to the Acquired Group; and

iii. the Delta HoldCos had no obligation to repay the amounts owing by them to GCUK on each Maturity Date, as any obligation to do so was discharged by the simultaneous drawdown to occur automatically on each such date;

c. says further that the effect of clauses 5 and 6 of the IPA Supplementary Letters is that from 20 May 2020:

i. the Delta HoldCos were not required to pay interest on funding provided by GCUK under the Delta IPAs; and

ii. interest at the rate of LIBOR plus 4.25% was instead payable as a Facility Fee on written demand by GCUK;

d. refers to the IPA Supplementary Letters for their full force and effect; and

e. otherwise admits the paragraph.

E.6. Guarantees

126. TMNF admits paragraph 126 of the ASOC.

127. In response to paragraph 127 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the agreements to which it refers (the **Delta HoldCo Guarantees**);

b. refers to the terms of the Delta HoldCo Guarantees for their full force and effect; and

c. otherwise admits the paragraph.

128. In response to paragraph 128 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the agreement to which it refers;

b. refers to that agreement for its full force and effect; and

c. otherwise admits the paragraph.

E.7. Assignment Agreements between GCUK and Greensill Bank

Master Assignment Agreement

129. In response to paragraph 129 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the agreement to which it refers (the **GBAG MAA**);

b. refers to the terms of the GBAG MAA for their full force and effect; and

c. otherwise admits the paragraph.

130. In response to paragraph 130 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the GBAG MAA;

b. refers to the terms of the GBAG MAA for their full force and effect; and

c. otherwise admits the paragraph.

131. In response to paragraph 131 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the GBAG MAA;

b. refers to the terms of the GBAG MAA for their full force and effect; and

c. otherwise admits the paragraph.

First Assignment Agreement

132. In response to paragraph 132 of the ASOC, TMNF:

a. admits that GCUK and Greensill Bank entered into the agreement to which it refers (the **First Assignment Agreement**);

b. says that Recital (B) of the First Assignment Agreement provided that GCUK has entered into, or will enter into, a receivables purchase agreement between GCUK and each of the AR Sellers (being each of the Subsidiaries as defined in each Delta IPA) pursuant to which each AR Seller will sell, transfer and assign to GCUK certain Accounts Receivable;

c. says that, so far as it is aware, no receivables purchase agreement was entered into between GCUK and any of the AR Sellers;

d. refers to the terms of the First Assignment Agreement for their full force and effect; and

e. otherwise does not know and therefore cannot admit the paragraph.

133. In response to paragraph 133 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 1.1 of the First Assignment Agreement;

b. refers to the terms of the First Assignment Agreement for their full force and effect; and

c. otherwise admits the paragraph.

134. In response to paragraph 134 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 2 of the First Assignment Agreement;

b. refers to the terms of the First Assignment Agreement for their full force and effect;

c. says that, so far as it is aware:

i. no Receivables Purchase Agreement was entered into between GCUK and any AR Seller;

ii. GCUK therefore never had any right, title or interest in any Accounts Receivable capable of assignment under the First Assignment Agreement; and

iii. no Accounts Receivable were assigned to GCUK under the First Assignment Agreement; and

d. otherwise admits the paragraph.

Second Assignment Agreement

135. In response to paragraph 135 of the ASOC, TMNF:

a. admits that GCUK and Greensill Bank entered into the agreement to which it refers (the **Second Assignment Agreement**);

b. admits that, by clause 2(i) of the Second Assignment Agreement, GCUK and Greensill Bank agreed to terminate the First Assignment Agreement with immediate effect;

c. refers to the terms of the Second Assignment Agreement for their full force and effect; and

d. otherwise admits the paragraph.

136. In response to paragraph 136 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of Recital (A) of the Second Assignment Agreement;

b. refers to the terms of the Second Assignment Agreement for their full force and effect; and

c. otherwise admits the paragraph.

137. In response to paragraph 137 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clauses 2 and 3 of the Second Assignment Agreement;

b. refers to the terms of the Second Assignment Agreement for their full force and effect;

c. says that Assigned Asset was defined in the Second Assignment Agreement to mean each Accounts Receivable and any Additional Rights assigned by GCUK to Greensill Bank pursuant to clause 3 of the Second Assignment Agreement;

d. says that Accounts Receivable was defined in the Second Assignment Agreement to mean any existing and future right of Speciality Steel UK Limited (**SSUK)** to receive any and all present and future payments of money due from an AR Debtor identified in Schedule 1 to the Second Assignment Agreement in consideration for the supply of goods and/or services;

e. says that, so far as it is aware:

i. no rights to receive payment of money due from an AR Debtor were ever assigned to SSUK; and

ii. SSUK therefore never had any Accounts Receivable to assign to GCUK under the Receivables Purchase Agreement referred to in Recital (B) in the Second Assignment Agreement; and

f. otherwise admits the paragraph.

Second Assignment Agreement Supplementary Letters

138. In response to paragraph 138 of the ASOC, TMNF:

a. admits that GCUK signed the letters to which it refers (**Second Assignment Agreement Supplementary Letters**);

b. refers to those letters for their full force and effect; and

c. otherwise denies the paragraph.

IPU Confirmation Agreement

139. In response to paragraph 139 of the ASOC, TMNF:

a. admits that GCUK and Greensill Bank entered into the agreement to which it refers (the **IPU Confirmation Agreement**);

b. refers to the terms of the IPU Confirmation Agreement for their full force and effect; and

c. otherwise does not know and therefore cannot admit the paragraph.

140. In response to paragraph 140 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clauses 2 and 3 of the IPU Confirmation Agreement;

b. refers to the terms of the IPU Confirmation Agreement for their full force and effect;

c. refers to and repeats paragraph 137 of this Defence and says that, so far as it is aware, GCUK never had any rights to Accounts Receivable within the meaning of the Second Assignment Agreement and therefore never held any rights capable of assignment to Greensill Bank under the Second Assignment Agreement; and

d. otherwise admits the paragraph.

Consideration Acknowledgement Agreement

141. In response to paragraph 141 of the ASOC, TMNF:

a. admits that GCUK and Greensill Bank entered into the agreement to which it refers (the **Consideration Acknowledgement Agreement**);

b. refers to the terms of the Consideration Acknowledgement Agreement for their full force and effect; and

c. otherwise admits the paragraph.

E.8. Advances made by GCUK to the Delta HoldCos under the Delta IPAs

142. In response to paragraph 142 of the ASOC, TMNF:

a. admits that each of the Delta HoldCos signed a letter addressed to GCUK on 27 June 2019, each purporting to attach one of the Offer Files referred to in the first to fourth particulars to the paragraph;

b. says that the attached Offer Files were prepared by GCUK and not by each Delta HoldCo;

c. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

d. denies that the “Supplementary Report” spreadsheet referred to in the fifth particular to the paragraph was submitted by any or all of the Delta HoldCos to

GCUK and says that the document was an internal GCUK document and could not have constituted or formed part of a Drawdown File submitted by a Delta HoldCo to GCUK within the meaning of the Delta IPAs;

e. denies that either the letters, or their attached Offer Files, set out the Account Debtor to which each invoice related, but says rather that each Offer File gave an "Account Name" for each invoice, being the words "Dudelange Portfolio 1", "Galati Portfolio 1", "Liege Portfolio 1", or "Ostrava Portfolio 1";

f. says accordingly that the letters and attached "Offer Files" did not constitute "Drawdown Files" within the meaning of the Delta IPAs, as they failed to set out "the Account Debtors from whom receivables are owed or will be owed to the Subsidiary which have been used to calculate the Drawdown Amount";

g. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to an AR Seller within the meaning of the First Assignment Agreement;

h. refers to those letters for their full force and effect; and

i. otherwise denies the paragraph.

143. In response to paragraph 143 of the ASOC, TMNF:

a. admits that each of the Delta HoldCos signed a letter addressed to GCUK on 12 July 2019;

b. says that each such letter purported to attach only one attachment, being the corresponding "Offer File" referred to in the particulars to the paragraph;

c. says that the attached Offer Files were prepared by GCUK and not by each Delta HoldCo;

d. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

e. denies that the letters attached or otherwise referred to the "Supplementary Report" spreadsheets particularised in the paragraph;

f. denies that each "Supplementary Report" spreadsheet particularised was submitted by any or all of the Delta HoldCos to GCUK and says that the document was an internal GCUK document and could not have constituted or formed part of

a Drawdown File submitted by a Delta HoldCo to GCUK within the meaning of the Delta IPAs;

g. denies that either the letters, or their attached "Offer Files", set out the Account Debtor to which each invoice related, but says rather that each "Offer File" gave an "Account Name" for each invoice, being the words "Dudelange Portfolio 2", "Galati Portfolio 2", "Liege Portfolio 2", or "Ostrava Portfolio 2";

h. says accordingly that the letters and attached "Offer Files" did not constitute "Drawdown Files" within the meaning of the Delta IPAs, as they failed to set out "the Account Debtors from whom receivables are owed or will be owed to the Subsidiary which have been used to calculate the Drawdown Amount";

i. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to SSUK within the meaning of the Second Assignment Agreement;

j. refers to those letters for their full force and effect; and

k. otherwise denies the paragraph.

144. In response to paragraph 144 of the ASOC, TMNF:

a. admits that each of the Delta HoldCos signed a letter addressed to GCUK on 18 July 2019;

b. says that each such letter purported to attach only one attachment, being the corresponding "Offer File" referred to in the particulars to the paragraph;

c. says that the attached Offer Files were prepared by GCUK and not by each Delta HoldCo;

d. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

e. denies that the letters attached or otherwise referred to the "Supplementary Report" spreadsheets particularised in the paragraph;

f. denies that each "Supplementary Report" spreadsheet particularised was submitted by any of the Delta HoldCos to GCUK and says that each such document was an internal GCUK document and could not have constituted or

formed part of a Drawdown File submitted by a Delta HoldCo to GCUK within the meaning of the Delta IPAs;

g. denies that either the letters, or their attached "Offer Files", set out the Account Debtor to which each invoice related, but says rather that each "Offer File" gave an "Account Name" for each invoice, being the words "Duedleange Portfolio 3", "Galati Portfolio 3", "Liege Portfolio 3", or "Ostrava Portfolio 3";

h. says accordingly that the letters and attached "Offer Files" did not constitute "Drawdown Files" within the meaning of the Delta IPAs, as they failed to set out "the Account Debtors from whom receivables are owed or will be owed to the Subsidiary which have been used to calculate the Drawdown Amount";

i. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to SSUK within the meaning of the Second Assignment Agreement;

j. refers to those letters for their full force and effect; and

k. otherwise denies the paragraph.

145. In response to paragraph 145 of the ASOC, TMNF:

a. admits that each of the Delta HoldCos signed a letter addressed to GCUK on 20 August 2019;

b. says that each such letter purported to attach only one attachment, being the corresponding "Offer File" referred to in the particulars to the paragraph;

c. says that the attached Offer Files were prepared by GCUK and not by each Delta HoldCo;

d. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

e. denies that the letters attached or otherwise referred to the "Supplementary Report" spreadsheets particularised in the paragraph;

f. denies that each "Supplementary Report" spreadsheet particularised was submitted by any of the Delta HoldCos to GCUK and says that each such document was an internal GCUK document and could not have constituted or

formed part of a Drawdown File submitted by a Delta HoldCo to GCUK within the meaning of the Delta IPAs;

g. denies that either the letters, or their attached "Offer Files", set out the Account Debtor to which each invoice related, but says rather that each "Offer File" gave an "Account Name" for each invoice, being the words "Duedleange Portfolio 4", "Galati Portfolio 4", "Liege Portfolio 4", or "Ostrava Portfolio 4";

h. says accordingly that the letters and attached "Offer Files" did not constitute "Drawdown Files" within the meaning of the Delta IPAs, as they failed to set out "the Account Debtors from whom receivables are owed or will be owed to the Subsidiary which have been used to calculate the Drawdown Amount";

i. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to SSUK within the meaning of the Second Assignment Agreement ;

j. refers to those letters for their full force and effect; and

k. otherwise denies the paragraph.

146. In response to paragraph 146 of the ASOC, TMNF:

a. admits that each of the Delta HoldCos signed a letter addressed to GCUK on 19 September 2019;

b. says that each such letter purported to attach only one attachment, being the corresponding "Offer File" referred to in the first to fourth particulars to the paragraph;

c. says that the attached Offer Files were prepared by GCUK and not by each Delta HoldCo;

d. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

e. denies that the letters attached or otherwise referred to the "Supplementary Report" spreadsheet referred to in the fifth particular to the paragraph;

f. denies that the "Supplementary Report" spreadsheet referred to in the fifth particular was submitted by any or all of the Delta HoldCos to GCUK and says that the document was an internal GCUK document and could not have constituted or

formed part of a Drawdown File submitted by a Delta HoldCo to GCUK within the meaning of the Delta IPAs;

g. denies that either the letters, or their attached "Offer Files", set out the Account Debtor to which each invoice related, but says rather that each "Offer File" gave an "Account Name" for each invoice, being the words "Duedleange Portfolio 5", "Galati Portfolio 5", "Liege Portfolio 5", or "Ostrava Portfolio 5";

h. says accordingly that the letters and attached "Offer Files" did not constitute "Drawdown Files" within the meaning of the Delta IPAs, as they failed to set out "the Account Debtors from whom receivables are owed or will be owed to the Subsidiary which have been used to calculate the Drawdown Amount";

i. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to SSUK within the meaning of the Second Assignment Agreement;

j. refers to those letters for their full force and effect; and

k. otherwise denies the paragraph.

147. In response to paragraph 147 of the ASOC, TMNF:

a. admits that each of Galati, Liege and Ostrava signed a letter addressed to GCUK on 14 November 2019, each of which purported to attach the corresponding "Offer File" referred to in the particulars to the paragraph;

b. says that the attached Offer Files were prepared by GCUK and not by any of Galati, Liege and Ostrava;

c. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

d. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to SSUK within the meaning of the Second Assignment Agreement;

e. refers to those letters for their full force and effect; and

f. otherwise denies the paragraph.

148. In response to paragraph 148 of the ASOC, TMNF:

a. admits that each of the Delta HoldCos signed a letter addressed to GCUK on 27 November 2019;

b. says that each such letter purported to attach only one attachment, being the corresponding "Offer File" referred to in the particulars to the paragraph;

c. denies that the letters attached or otherwise referred to the "Supplementary Report" spreadsheets particularised in the paragraph;

d. says that the attached Offer Files were prepared by GCUK and not by each Delta HoldCo;

e. does not know and therefore cannot admit whether each such Offer File was submitted by the relevant Delta HoldCo to GCUK;

f. denies that each "Supplementary Report" spreadsheet particularised was submitted by any or all of the Delta HoldCos to GCUK and says that the document was an internal GCUK document and could not have constituted or formed part of a Drawdown File submitted by a Delta HoldCo to GCUK within the meaning of the Delta IPAs;

g. denies that either the letters, or their attached "Offer Files", set out the Account Debtor to which each invoice related, but says rather that each "Offer File" gave an "Account Name" for each invoice, being the words "Duedleange Portfolio 7", "Galati Portfolio 7", "Liege Portfolio 7", or "Ostrava Portfolio 7";

h. says accordingly that the letters and attached "Offer Files" did not constitute "Drawdown Files" within the meaning of the Delta IPAs, as they failed to set out "the Account Debtors from whom receivables are owed or will be owed to the Subsidiary which have been used to calculate the Drawdown Amount";

i. denies that the attached "Offer Files" identified any genuine Accounts Receivable owing by an AR Debtor to SSUK within the meaning of the Second Assignment Agreement;

j. refers to those letters for their full force and effect; and

k. otherwise denies the paragraph.

149. TMNF does not know and therefore cannot admit paragraph 149 of the ASOC.

150. In response to paragraph 150 of the ASOC, TMNF:

a. refers to and repeats paragraphs 142 to 148 of this Defence; and

b. in the premises, denies that the alleged Original Drawdown Files constituted Drawdown Files within the meaning of the Delta IPAs;

c. accordingly, denies that any "New Drawdown Files" were deemed to have been created upon expiry of the alleged "Original Drawdown Files"; and

d. otherwise denies the paragraph.

151. In response to paragraph 151 of the ASOC, TMNF:

a. refers to and repeats paragraphs 123–125 and 142–150 of this Defence; and

b. otherwise denies the paragraph.

E.9. Assignment of Delta IPUs to Greensill Bank

152. In response to paragraph 152 of the ASOC, TMNF:

a. refers to and repeats paragraphs 129 to 151 of this Defence;

b. in the premises, does not admit that the Delta IPUs were debts validly owing from the Delta HoldCos to GCUK; and

c. otherwise denies the paragraph.

153. In response to paragraph 153 of the ASOC, TMNF:

a. refers to and repeats paragraphs 129 to 152 of this Defence; and

b. otherwise denies the paragraph.

E.10. SSUK Receivables Purchase Agreement

154. TMNF admits paragraph 154 of the ASOC.

155. In response to paragraph 155 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the agreement to which it refers (**the SSUK RPA**);

b. refers to the terms of the SSUK RPA for their full force and effect; and

c. otherwise admits the paragraph.

156. In response to paragraph 156 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the SSUK RPA and of the SSUK RPA Supplementary Letter (as defined in the particulars to paragraph 156) to which it refers;

b. denies that the SSUK RPA Supplementary Letter had any effect on the operation of the SSUK RPA, including the valid assignment of accounts receivable between SSUK and GCUK in accordance with its terms, prior to 10 February 2021;

c. refers to the terms of the SSUK RPA and of the SSUK RPA Supplementary Letter for their full force and effect; and

d. otherwise admits the paragraph.

157. In response to paragraph 157 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the SSUK RPA to which it refers;

b. says that "Eligible Jurisdiction" was defined in the SSUK RPA as England & Wales, Germany and each other jurisdiction as agreed between GCUK and SSUK from time to time;

c. says that a further requirement of an Eligible Receivable was that it is (or is expected to be) denominated in Pounds Sterling or any other currency agreed between GCUK and SSUK;

d. refers to the terms of the SSUK RPA for their full force and effect; and

e. otherwise admits the paragraph.

158. TMNF denies paragraph 158 of the ASOC.

SSUK RPA Supplementary Letter

159. In response to paragraph 159 of the ASOC, TMNF:

a. admits that, on or around 10 February 2021, GCUK and SSUK entered into the SSUK RPA Supplementary Letter;

b. refers to and repeats paragraph 156(b) of this Defence and denies that the SSUK RPA Supplementary Letter had any effect on the operation of the SSUK RPA,

including the valid assignment of accounts receivable between SSUK and GCUK in accordance with its terms, prior to 10 February 2021;

c. says that, despite the terms of clause 4 of the SSUK RPA Supplementary Letter, no Requests or Offer Files were annexed to the SSUK RPA Supplementary Letter; and

d. otherwise denies the paragraph.

160. In response to paragraph 160 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 3 of the SSUK RPA Supplementary Letter;

b. refers to the terms of the SSUK RPA Supplementary Letter for their full force and effect;

c. does not admit the truth of the assertions in the SSUK RPA Supplementary Letter as to how GCUK and SSUK had conducted their relationship since 27 June 2019;

d. refers to and repeats paragraph 156(b) of this Defence;

e. says that:

i. it is not alleged that any rights to receive payment of money due from an AR Debtor (as defined in the Second Assignment Agreement) were ever assigned to SSUK; and

ii. so far as it is aware, no rights to receive payment of money due from an AR Debtor (as defined in the Second Assignment Agreement) were ever assigned to SSUK, including by way of intra-group transfer;

f. accordingly, does not admit that SSUK had any Eligible Receivables to assign to GCUK under the SSUK RPA; and

g. otherwise admits the paragraph.

161. In response to paragraph 161 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 3 of the SSUK RPA Supplementary Letter;

b. refers to the terms of the SSUK RPA Supplementary Letter for their full force and effect;

c. refers to and repeats paragraph 156(b) of this Defence; and

d. otherwise admits the paragraph.

162. In response to paragraph 162 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of clause 9 of the SSUK RPA Supplementary Letter;

b. refers to the terms of the SSUK RPA Supplementary Letter for their full force and effect;

c. refers to and repeats paragraph 156(b) of this Defence; and

d. otherwise admits the paragraph.

E.11. Sale and assignment of receivables under the SSUK RPA

163. In response to paragraph 163 of the ASOC, TMNF:

a. says that each of the alleged Proposed Receivables set out in Annexure A of the ASOC (**GCUK Purchased Receivables**) purports to be a receivable referable to a Delta HoldCo;

b. denies that any of the GCUK Purchased Receivables was a genuine account receivable owing by the relevant Account Debtor nominated in Annexure A to either the relevant Delta HoldCo nominated in Annexure A or SSUK, or their affiliates;

c. further or alternatively, says that even if any of the GCUK Purchased Receivables was owed by the relevant Account Debtor nominated in Annexure A to the nominated Delta HoldCo (or its subsidiary), the ASOC does not allege that such receivable was ever assigned by the relevant Delta HoldCo (or its subsidiary) to SSUK;

d. denies that SSUK as Seller under the SSUK RPA was the legal and beneficial owner of any of the GCUK Purchased Receivables;

e. denies that any of the GCUK Purchased Receivables comprised a right to receive payment of consideration from the nominated Account Debtor for the purchase by

the Account Debtor from SSUK ((or any affiliate of SSUK) of tangible moveable goods;

f. denies that any of the GCUK Purchased Receivables was based on an actual and bona fide sale of goods by SSUK (or any affiliate of SSUK) in the ordinary course of business in return for consideration of SSUK (or any affiliate of SSUK) pursuant to a written sales contract that had already been entered into by SSUK (or any affiliate of SSUK) with the nominated Account Debtor;

g. says that the nominated Account Debtors for many of the GCUK Purchased Receivables are not registered and domiciled in an Eligible Jurisdiction;

h. in the premises, denies that any of the GCUK Purchased Receivables was an Eligible Receivable under the SSUK RPA capable of assignment to GCUK under the SSUK RPA; and

i. otherwise denies the paragraph.

164. In response to paragraph 164 of the ASOC, TMNF:

a. refers to and repeats paragraphs 156(b) and 163 of this Defence;

b. denies that any of the GCUK Purchased Receivables was validly assigned to GCUK under the SSUK RPA; and

c. otherwise denies the paragraph.

E.12. The Delta HoldCo Customer Endorsements

Delta HoldCo Customer Endorsements

165. In response to paragraph 165 of the ASOC, TMNF:

a. admits that on 25 June 2019, documents styled “Customer Endorsement No: 1”, “Customer Endorsement No: 2”, “Customer Endorsement No: 3” and “Customer Endorsement No: 4” (together, **the Delta HoldCo Customer Endorsements**) were signed by Mr Brereton;

b. refers to and repeats paragraphs 65 and 68 of this Defence;

c. further or alternatively, says that the Delta HoldCo Customer Endorsements were not valid “Customer Endorsements” under the Policy because Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate,

whereas the Delta HoldCo Customer Endorsements specified an amount of 1 Euro, which is not a percentage premium rate; and

d. otherwise does not know and therefore cannot admit the paragraph.

165A. In response to paragraph 165A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 165 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

166. In response to paragraph 166 of the ASOC, TMNF:

a. refers to and repeats paragraph 165 of this Defence;

b. says that the paragraph is a paraphrase of the clauses of the Delta HoldCo Customer Endorsements to which it refers;

c. refers to the relevant terms of the Delta HoldCo Customer Endorsements for their full force and effect; and

d. otherwise admits the paragraph.

167. In response to paragraph 167 of the ASOC, TMNF:

a. refers to and repeats paragraphs 81 and 165 of this Defence;

b. says that the maximum limit of liability under the Policy for Liberty House in its capacity as guarantor of the obligations of each Delta HoldCo is the amount recorded as the Customer Limit in the relevant Delta HoldCo Customer Endorsement; and

c. otherwise denies the paragraph.

168. In response to paragraph 168 of the ASOC, TMNF:

a. admits that on the dates particularised, documents styled with the titles particularised (together, the **Further Delta HoldCo Customer Endorsements**) were signed by Mr Brereton;

b. refers to and repeats paragraphs 65 and 68 of this Defence;

c. further or alternatively, says that the Further Delta HoldCo Customer Endorsements were not valid "Customer Endorsements" under the Policy because, on the proper construction of that policy:

i. the Policy did not authorise the issue of a "Customer Endorsement" that purported to operate retrospectively; and

ii. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, whereas the Further Delta HoldCo Customer Endorsements specified an amount of 1 Euro, which is not a percentage premium rate; and

d. otherwise does not know and therefore cannot admit the paragraph.

168A. In response to paragraph 168A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 168 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

168B. In response to paragraph 168B of the ASOC, TMNF:

a. refers to and repeats paragraph 102A of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 168 of the ASOC; and

b. otherwise denies the paragraph.

169. In response to paragraph 169 of the ASOC, TMNF:

a. refers to and repeats paragraphs 81 and 168 of this Defence;

b. says that the maximum limit of liability under the Policy for each Delta HoldCo is the amount recorded as the Customer Limit in the relevant Delta HoldCo Customer Endorsement; and

c. otherwise admits the paragraph.

170A. In further answer to paragraphs 165 to 169 of the ASOC and consequently to the entirety of the claim the subject of the ASOC, TMNF says as follows:

a. when the concept of a future accounts receivable facility was presented by the Greensill Group to Mr Brereton, the Greensill Group represented to Mr Brereton

that under such a facility GCUK would purchase future accounts receivable from a Seller where:

i. there was an existing commercial relationship between the Seller and the Account Debtors;

ii. GCUK would lend against inventory to be sold to pre-determined Account Debtors under existing sales contracts, with the borrowing base of available inventory to be tested monthly;

iii. the borrowing base of existing inventory able to be sold to Account Debtors under existing sales contracts would be valued by an independent third-party valuer by way of a desktop audit report within 30 days of the end of each month and an on-site audit report within 75 days of the end of each half-year;

iv. GCUK would enter into a receivables purchase agreement with the Seller under which the accounts receivable to be created under the existing sales contracts with the Account Debtors by the sale of existing inventory to the Account Debtors would be assigned to GCUK; and

v. when the Seller requests a loan from GCUK it will provide a utilisation request indicating details of the Account Debtors to whom the existing inventory will be sold and in what amounts;

(together, **the Future AR Facility Representations**);

Particulars

i. PowerPoint presentation presented by the Greensill Group to Greg Brereton in or about February 2019 entitled “Future Receivables Financing for Liberty OneSteel (Primary) UK Ltd” [TOK.502.00000052].

ii. Further particulars to be provided after discovery and evidence.

b. when Lex Greensill on behalf of the Greensill Group presented the Liberty Delta risk to Mr Brereton in June 2019, he represented to Mr Brereton that the future accounts receivable facility between GCUK and the Delta HoldCos was intended to operate in the same manner as that represented by the Future AR Facility Representations;

Particulars

Email sent by Lex Greensill to Greg Brereton on 20 June 2019 at 6.47am [TOK.001.00104435]: *"we are assisting Liberty with the acquisition through a series of working capital facilities reflecting, in part, those that you have previously seen with Liberty Primary and Specialty Steel"*.

c. by reason of the matters pleaded in sub-paragraphs (a) and (b) above, the Greensill Group represented that, to the extent GCUK may lend funds to the Delta HoldCos in amounts derived by reference to future accounts receivable, the facility would be operated in the manner represented by the Future AR Facility Representations (**Liberty Delta Future AR Facility Representations**);

d. the Liberty Delta Future AR Facility Representations were representations that were continuing as at 25 June 2019, when the alleged customer endorsements pleaded to in paragraph 165 of the ASOC were signed;

e. the Liberty Delta Future AR Facility Representations were misrepresentations at the time they were made and during the life of the Liberty Delta facility, as GCUK did not intend to operate, and did not operate, the Liberty Delta facility in the manner pleaded in sub-paragraph (a) above;

Particulars

i. GCUK did not intend to, and did not, require that Account Debtors under the Liberty Delta facility be parties to existing sales contracts with a Delta OpCo.

ii. GCUK did not intend to, and did not, require that the amounts of future accounts receivable financed under the Liberty Delta facility be supported at the time of drawdown by existing inventory valued on a monthly basis by a third party independent valuer.

iii. No valuation reports in respect of any of the alleged debts in Annexure A to the ASOC have been provided to the Insurer despite requests.

iv. It may be inferred from the fact that none of the alleged debts in Annexure A to the ASOC became the subject of an actual account receivable owing by an Account Debtor that GCUK did not intend to

operate, and did not operate, the Liberty Delta facility in the manner pleaded in sub-paragraph (a) above.

v. Annexure AA to this Defence.

f. in the premises, if the Policy and relevant endorsements were validly entered into on behalf of IAL by BCC (which is not admitted) then Greensill Bank has not suffered any loss or damage by reason of the matters alleged against TMNF, because, by reason of the foregoing misrepresentations:

i. pursuant to s 28(3) of the *Insurance Contracts Act 1984* (Cth) (**ICA**):

A. the Liberty Delta Future AR Facility Representations were misrepresentations made to IAL before 25 June 2019, when the alleged customer endorsements pleaded to in paragraph 165 of the ASOC were signed;

B. IAL would not have entered into those alleged customer endorsements, or the subsequent alleged customer endorsements pleaded to in paragraph 168 of the ASOC, for the same premium and on the same terms and conditions, or at all, if the true position had been disclosed; and

C. accordingly, any right Greensill Bank has to indemnity is reduced to the amount that would place IAL in the position it would have been had the Liberty Delta Future AR Facility Representations not been made, that amount being nil;

ii. had IAL or BCC been aware of the true position as pleaded in subparagraph (e) above, it would not have agreed to insure any future accounts receivable risk presented by the Greensill Group, and in particular, it would not have agreed to execute the alleged customer endorsements of 25 June 2019 pleaded to in paragraph 165 of the ASOC or the subsequent alleged customer endorsements pleaded to in paragraph 168 of the ASOC; and

iii. further or alternatively, pursuant to cl 9.7 of the 2019 Policy:

A. the Liberty Delta Future AR Facility Representations constituted a failure by Greensill Bank and/or GCPL to comply with its duty of fair presentation pursuant to cl 7.1 of the 2019 Policy; and

B. that failure had a 'Material Policy Impact' as defined in Schedule 1 to the 2019 Policy in that it:

1. materially increased the likelihood of the alleged Loss the subject of the ASOC occurring;

2. materially increased the amount of such Loss;

3. materially decreased the likely amount of any recovery in respect of such Loss; or

4. any combination of the above, and

as such IAL has no liability to indemnify Greensill Bank for the loss claimed in the ASOC.

E.13. Whether the Delta IPUs were each a "Debt" within the meaning of Policy 5369

Debt Endorsement

170. In response to paragraph 170 of the ASOC, TMNF:

a. admits that on or around 25 June 2019, a document styled "Endorsement 1" was signed by Mr Brereton;

b. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

c. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC; and/or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into "Endorsement 1" (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or "Endorsement 1", Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequence pleaded in paragraph 253 of this Defence; and

d. otherwise does not know and therefore cannot admit the paragraph.

171. In response to paragraph 171 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 68 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

171A. In response to paragraph 171A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraphs 170 and 171 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

172. In response to paragraph 172 of the ASOC, TMNF:

a. refers to and repeats paragraphs 170 and 171 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

173. In response to paragraph 173 of the ASOC, TMNF:

a. refers to and repeats paragraph 170 to 172 of this Defence;

b. says that the paragraph is a paraphrase of the definition of “Debt” in Part (B) of “Endorsement 1”;

c. refers to the terms of “Endorsement 1” for their full force and effect; and

d. otherwise admits the paragraph.

174. In response to paragraph 174 of the ASOC, TMNF:

a. refers to and repeats paragraph 170 to 172 of this Defence;

b. as to sub-paragraphs a. and b., says that those sub-paragraphs are a paraphrase of the definitions in “Endorsement 1” to which they refer;

c. denies sub-paragraph e. and says that “accounts receivable” is undefined in “Endorsement 1” and that the definition of “Debt” in Part (A) of “Endorsement 1” cannot inform the definition of “Debt” in Part (B) of “Endorsement 1” which is in different terms;

d. says that a "Debt" for the purposes of Part (B) of "Endorsement 1" does not include an amount payable under a Receivables Purchase Agreement to repurchase or provide an indemnity payment in relation to future accounts receivable as distinct from actual accounts receivable;

e. refers to the terms of "Endorsement 1" for their full force and effect; and

f. otherwise admits the paragraph.

175. TMNF denies paragraph 175 of the ASOC.

176. TMNF denies paragraph 176 of the ASOC.

Limit Endorsement

176A. In response to paragraph 176A of the ASOC, TMNF:

a. admits that on or around 14 November 2019, a document styled "Risk and Endorsement Indemnification Details" with Endorsement Reference "3" (**Limit Endorsement**) was signed by Mr Brereton;

b. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

c. further and alternatively, says that the document was not an 'Endorsement' within the meaning of the Policy and did not validly vary the Policy as:

i. the Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement;

ii. further and alternatively, cl 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party, and the document signed on 14 November 2019 was not signed on behalf of GCPL or Greensill Bank (and for the avoidance of doubt, Greensill Bank is hereby notified by this Defence that any authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution by any other party); and

d. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC; and/or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into the Limit Endorsement (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or the Limit Endorsement, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures, with the consequence pleaded in paragraph 253 of this Defence; and

e. otherwise does not know and therefore cannot admit the paragraph.

177. In response to paragraph 177 of the ASOC, TMNF:

a. admits that on or around 14 November 2019, a document styled "Risk and Endorsement Indemnification Details" with Endorsement Reference "3" (**Limit Endorsement**) was signed by Mr Brereton;

b. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

c. further and alternatively, says that the document was not an 'Endorsement' within the meaning of the Policy and did not validly vary the Policy as:

i. the Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, cl 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party, and the document signed on 14 November 2019 was not signed on behalf of GCPL or Greensill Bank (and for the avoidance of doubt, Greensill Bank is hereby notified by this Defence that any authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution by any other party); and

d. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC; and/or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into the Limit Endorsement (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or the Limit Endorsement, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures, with the consequence pleaded in paragraph 253 of this Defence; and

e. otherwise does not know and therefore cannot admit the paragraph.

177A. In response to paragraph 177A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 176A and 177 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

177B. In response to paragraph 177B of the ASOC, TMNF:

a. refers to and repeats paragraph 102A of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 176A and 177 of the ASOC; and

b. otherwise denies the paragraph.

178. In response to paragraph 178 of the ASOC, TMNF:

a. refers to and repeats paragraphs 81, 177 and 184.f) of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

Whether Account Debtors endorsed as Customers under Policy 5369

179. In response to paragraph 179 of the ASOC, TMNF:

a. admits that on the dates particularised, documents styled with the titles particularised (together, the **Account Debtor Customer Endorsements**) were signed by Mr Brereton;

b. refers to and repeats paragraphs 65 and 68 of this Defence;

c. further or alternatively, says that the Account Debtor Customer Endorsements were not valid "Customer Endorsements" under the Policy because, on the proper construction of that policy:

i. the Policy did not authorise the issue of a "Customer Endorsement" that purported to operate retrospectively; and

ii. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, whereas the Account Debtor Customer Endorsements did not specify any premium rate at all;

iii. Appendix 1 of the Policy required a Customer Endorsement to express a Maximum Tenor, which Account Debtor Customer Endorsements failed to do; and

d. otherwise does not know and therefore cannot admit the paragraph.

179A. In response to paragraph 179A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 179 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

179B. In response to paragraph 179B of the ASOC, TMNF:

a. refers to and repeats paragraph 102A of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 179 of the ASOC; and

b. otherwise denies the paragraph.

180. In response to paragraph 180 of the ASOC, TMNF:

a. admits that BCC sent letters to the Prüfungsverband deutscher Banken on 8 March 2020 and 16 March 2020;

b. refers to those letters for their full force and effect; and

c. otherwise admits the paragraph.

180A. In response to paragraph 180A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 180 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

180B. In response to paragraph 180B of the ASOC, TMNF:

a. refers to and repeats paragraph 102A of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 180 of the ASOC; and

b. otherwise denies the paragraph.

Whether the Delta IPUs and the Guaranteed Obligations were Debts under Policy 5369

181. In response to paragraph 181 of the ASOC, TMNF:

a. refers to and repeats paragraphs 123 to 151 of this Defence;

b. in the premises, does not admit that the Delta IPUs were debts validly owing from the Delta HoldCos to GCUK;

c. refers to and repeats paragraphs 65 and 68 of this Defence;

d. admits that the Policy defined "Servicer" to mean GCUK;

e. says that if, as alleged, the Delta IPUs were assigned from GCUK to Greensill Bank they were no longer payable to GCUK; and

f. otherwise denies the paragraph.

182. In response to paragraph 182 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 165 to 175 of this Defence; and

b. otherwise denies the paragraph.

183. In response to paragraph 183 of the ASOC, TMNF:

a. refers to and repeats paragraphs 170 to 175 and 181 of this Defence; and

b. otherwise denies the paragraph.

184. In response to paragraph 184 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 142 to 151, 160, 163, 164, 165, 168, 170, 175, 176, 177 and 179 of this Defence;

b. in the premises, denies the paragraph;

c. says further that the purported Debts did not originate in the course of an accounts receivable purchase program (or any program where funding is made against accounts receivable), as required by the heading to Part B of "Endorsement 1", and accordingly are not Debts for the purposes of Part B of "Endorsement 1";

d. says that, by reason of Part A, Additional Condition 1 of "Endorsement 1", to the extent that there has been an Event of Repurchase in respect of any of the debts the subject of Annexure A of the ASOC (which is not admitted), those debts are excluded from the Policy (and replaced by corresponding Part B Debts, if they qualify as such), by reason of the Event of Repurchase that has occurred in respect of each of them;

e. says further that some or all of the alleged debts never attached to the Policy, because:

i. clause 5.5 of the Policy provided that no Asset or part of any Asset would attach to the Policy to the extent that it breached the limits from time to time in force pursuant to the provisions of clause 5 of the Policy;

ii. by clause 5.1, those limits included the Applicable Limit of Liability, which was relevantly defined to mean the Customer Limit;

iii. the Customer Limit for Liberty House, Galati, Ostrava, Liege and Dudelange (**the Delta Entities**) was, by virtue of the endorsements pleaded to at paragraphs 165 to 169 of this Defence, EUR 5,000,000 each;

iv. in the premises, if (which is denied), EUR 5,000,000 worth of Part B debts owed by each Delta Entity had attached to the Policy, clause 5.5 operated to prevent any further debts from those customers attaching to the Policy until those debts had been repaid so as to bring the total of Part B debts owed by each Delta Entity below EUR 5,000,000;

v. the words "to be reset indefinitely as required if the Customer Limit is breached" contained in each endorsement pleaded to at paragraphs 165 to 169 of this Defence did not apply, as it only made special provision for the resetting of customer limits once and to the extent that there had been a breach of the Customer Limit by the Insured by submitting a claim at or in excess of that limit, rather than at the point in time in which a Part B debt attaches to the 2019 Policy;

vi. having regard to Annexure A of the ASOC, once a Part B debt had arisen in respect of the earliest payment obligation in that table in respect of each Delta Entity, only the first EUR 5,000,000 of that Debt could have attached to the Policy (if indeed the EUR 5,000,000 limit had not already been reached by an earlier payment obligation preceding those in Annexure A of the ASOC), and no further Part B debts in respect of the payment obligations in that table attached to the Policy; and

vii. in the premises, the Insurer's liability for the debts the subject of this proceeding can be no greater than EUR 25,000,000;

f. says further and in the alternative that, if the EUR 5,000,000 Customer Limit for the Delta Entities as set out in the endorsements pleaded to at paragraphs 165 to 169 of this Defence did not operate in the manner described at paragraph 184(e)of this Defence, then the Delta Entities as obligors of the alleged debts the subject of this proceeding did not have a Customer Limit established in accordance with the terms of the Policy, and therefore those alleged debts did not meet the definition of "Eligible Debt" pursuant to Schedule 7 of the Policy;

g. says further or in the alternative that the alleged debts the subject of this proceeding never attached to the Policy, because cl 5.5 of the Policy provided that such debts would attach "from the time the Insured … acquires risk in the Asset pursuant to the Transaction Documents", whereas the Insured never acquired any risk in the alleged accounts receivable the subject of this proceeding for the reasons pleaded at paragraphs 160 and 163 above;

h. says further that non-payment of the alleged debts the subject of this proceeding could not constitute a "Loss" within the meaning of the Policy, as a "Loss" as defined in the Policy could only occur in respect of an "Asset … owned by the Insured", and the Insured did not own any Asset for the reasons pleaded at paragraphs 160 and 163 above;

i. says further, or alternatively, that if the Policy and the relevant endorsements were validly issued and there was a "Loss" as defined in the Policy, then:

i. that loss is not recoverable by reason of the Prior Misrepresentations and Non-Disclosures as pleaded in paragraph 253 of this Defence; and

ii. further or alternatively, TMNF does not know what steps GCPL and Greensill Bank have taken to mitigate Loss (if any), and reserves its right to allege that

any indemnity payment should be reduced pursuant to cl 10.7 of the 2019 Policy following discovery and disclosure in this proceeding;

j. says further, or alternatively, that if the Policy and the relevant endorsements were validly issued and there was a "Loss" as defined in the Policy, then that loss is not recoverable because:

i. for a period of four months commencing by no later than December 2019, Liberty OneSteel (Primary) UK Ltd, defaulted in repaying amounts owing by it to GCUK (**the Liberty Defaults**);

ii. at the time that each subsequent risk relating to an entity in the same corporate group as Liberty OneSteel (Primary) UK Pty Ltd (**a Liberty Risk**) was presented to Brereton and/or BCC, the Greensill Group failed to disclose that the Liberty Defaults had occurred (**the Liberty Defaults Non-Disclosure**);

iii. in the premises, pursuant to s 28(3) of the ICA, any right Greensill Bank has to indemnity that depends upon an endorsement purportedly executed in or after December 2019 in relation to a Liberty Risk is reduced to the amount that would place IAL in the position it would have been had the Liberty Defaults Non-Disclosure not been made, that amount being nil; and

iv. further or alternatively, pursuant to cl 9.7 of the Policy, Greensill Bank and/or GCPL has failed to comply with its duty of fair presentation and those failures together or separately had a 'Material Policy Impact' such that IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings; and

k. says further, or alternatively, that a Stop Asset Acquisition Instruction prevented some or all of the debts the subject of the claim from attaching to the Policy, because:

i. clause 8.3(a) of the Policy provided that a Stop Asset Acquisition Instruction would automatically be deemed to have been issued where a Customer has failed to pay a Debt on the relevant Due Date and such failure to pay has not been remedied within 10 Business Days;

ii. by no later than 20 May 2020, each Delta HoldCo ceased to pay interest owing by it to GCUK under its relevant Delta IPA, and in so doing, failed to pay a Debt owed by it to GCUK under the relevant Delta IPA;

Particulars

IPA Supplementary Letters, cl 3.

iii. clause 8.3(a) of the Policy operated to require that debt to be repaid by each Delta HoldCo within 10 Business Days, failing which, a Stop Asset Acquisition Instruction would automatically be deemed to have been issued;

iv. a Stop Asset Acquisition Instruction was issued by no later than 3 June 2020, with the result that thereafter, no further debts from any of the Delta HoldCos attached to the Policy; and

v. as a result, no debts arising after the date of the deemed Stop Asset Acquisition Instruction were capable of attaching to the Policy, with the result that any debts arising after 3 June 2020 at the latest did not attach to the Policy;

l. says further and in the alternative that, by reason of the Liberty Defaults, a Stop Asset Acquisition Instruction prevented any of the debts the subject of this proceeding from attaching to the Policy, because:

i. the Liberty Defaults occurred by no later than 31 December 2019;

ii. clause 8.3(a) of the Policy operated to require Liberty OneSteel (Primary) UK Ltd to remedy its failure to repay the Debts the subject of the Liberty Defaults within 10 Business Days, failing which, a Stop Asset Acquisition instruction would automatically be deemed to have been issued in respect of Liberty OneSteel (Primary) UK Ltd and to all other members of the same Customer Group (**the Liberty Customer Group**);

iii. the Debts the subject of the Liberty Defaults were not repaid by Liberty OneSteel (Primary) UK Ltd within 10 Business Days (that is, by 14 January 2020 at the latest);

iv. a Stop Asset Acquisition Instruction was issued by no later than 14 January 2020 to Liberty OneSteel (Primary) UK Ltd and to the Liberty Customer Group, with the result that thereafter, no further debts from any member of the Liberty Customer Group, including the Delta HoldCos, attached to the Policy;

v. as a result, no debts arising after the date of the deemed Stop Asset Acquisition Instruction in respect of a customer in the Liberty Customer Group were capable of attaching to the Policy, with the result that any such alleged debts arising after 14 January 2020 at the latest did not attach to the Policy; and

vi. in the premises, none of the alleged debts the subject of this proceeding attached to the Policy, as each of them post-dated the Stop Asset Acquisition Instruction; and

m. further or alternatively, TMNF refers to and repeats paragraphs 404g, 477d, 525f, 643d and 714e of its defence filed in related proceeding NSD 169/2023, and says that, in the premises, the alleged debts the subject of the ASOC did not attach to the Policy, insofar as each and/or any of them post-dated the corresponding instruction made under the Policy simultaneously with the:

i. LCL Stop Asset Acquisition Instruction;

ii. Liberty House Stop Asset Acquisition Instruction;

iii. Liberty TCUK Stop Asset Acquisition Instruction;

iv. Simec Stop Asset Acquisition Instruction; or

v. SSUK Stop Asset Acquisition Instruction; and

n. otherwise denies the paragraph.

185. In response to paragraph 185 of the ASOC, TMNF:

a. refers to and repeats paragraph 181 of this Defence; and

b. otherwise admits the paragraph.

186. In response to paragraph 186 of the ASOC, TMNF:

a. refers to and repeats paragraph 182 of this Defence; and

b. otherwise denies the paragraph.

187. In response to paragraph 187 of the ASOC, TMNF:

a. refers to and repeats paragraph 185 of this Defence; and

b. otherwise admits the paragraph.

188. In response to paragraph 188 of the ASOC, TMNF:

a. refers to and repeats paragraph 184 of this Defence; and

b. otherwise denies the paragraph.

189. In response to paragraph 189 of the ASOC, TMNF:

a. refers to and repeats paragraphs 184 to 188 of this Defence; and

b. otherwise denies the paragraph.

190. In response to paragraph 190 of the ASOC, TMNF:

a. refers to and repeats paragraphs 181 to 189 of this Defence;

b. in the premises, denies that the Delta IPUs and any amounts payable by the Delta HoldCos under the Delta HoldCo Guarantees were Eligible Debts; and

c. otherwise denies the paragraph.

191. In response to paragraph 191 of the ASOC, TMNF:

a. refers to and repeats paragraph 181 of this Defence;

b. in the premises, denies that the Guaranteed Obligations came into existence; and

c. otherwise admits the paragraph.

192. In response to paragraph 192 of the ASOC, TMNF:

a. refers to and repeats paragraphs 168 to 170 of this Defence; and

b. otherwise denies the paragraph.

193. In response to paragraph 193 of the ASOC, TMNF:

a. refers to and repeats paragraph 191 of this Defence;

b. in the premises, denies that any amount relevantly became payable by Liberty House; and

c. otherwise admits the paragraph.

194. In response to paragraph 194 of the ASOC, TMNF:

a. refers to and repeats paragraphs 184 and 191 to 193 of this Defence;

b. in the premises, denies that the Delta HoldCos relevantly incurred any obligations, or that any such obligations fell within the definition of a "Debt" in "Endorsement 1"; and

c. otherwise denies the paragraph.

195. In response to paragraph 195 of the ASOC, TMNF:

a. refers to and repeats paragraphs 191 to 194 of this Defence; and

b. otherwise denies the paragraph.

196. In response to paragraph 196 of the ASOC, TMNF:

a. refers to and repeats paragraphs 191 to 195 of this Defence;

b. in the premises, denies that any amounts were payable by Liberty House under the Liberty House IPA Guarantee, or that any such amount was an Eligible Debt; and

c. otherwise denies the paragraph.

E.14. Payment Default by the Delta HoldCos and Liberty House

197. In response to paragraph 197 of the ASOC, TMNF:

a. admits that GCUK wrote letters on the particularised dates generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in those letters.

198. In response to paragraph 198 of the ASOC, TMNF:

a. admits that the Administrators of GCUK wrote letters on the particularised dates generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in those letters.

199. In response to paragraph 199 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 142 to 151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence; and

b. in the premises, denies the paragraph.

200. In response to paragraph 200 of the ASOC, TMNF:

a. admits that the Administrators of GCUK wrote letters on around the particularised dates generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in those letters.

201. In response to paragraph 201 of the ASOC, TMNF:

a. admits that the Administrators of GCUK and the Insolvency Administrator of Greensill Bank sent a letter on 25 February 2022 generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in the letter.

202. In response to paragraph 202 of the ASOC, TMNF:

a. admits that the Insolvency Administrator of Greensill Bank sent letters on 25 February 2022 generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in those letters.

203. In response to paragraph 203 of the ASOC, TMNF:

a. admits that the Insolvency Administrator of Greensill Bank sent letters on 25 February 2022 generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in those letters.

204. In response to paragraph 204 of the ASOC, TMNF:

a. admits that the Insolvency Administrator of Greensill Bank sent a letter on 25 February 2022 generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in the letter.

205. TMNF does not know and therefore cannot admit paragraph 205 of the ASOC.

206. In response to paragraph 206 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence; and

b. in the premises, denies the paragraph.

E.15. Notification and claim by Greensill Bank under Policy 5369

207. In response to paragraph 207 of the ASOC, TMNF:

a. admits that Greensill Bank sent letters on the dates pleaded generally to the effect pleaded; and

b. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence, and in the premises, does not admit the truth of the statements made in those letters.

208. TMNF admits paragraph 208 of the ASOC.

209. TMNF admits paragraph 209 of the ASOC.

210. In response to paragraph 210 of the ASOC, TMNF:

a. admits that Greensill Bank submitted a Claim Form on 28 February 2022; and

b. otherwise denies the paragraph.

211. In response to paragraph 211 of the ASOC, TMNF:

a. admits that the claim was submitted within 12 months of 2 March 2021, being the earliest date of alleged default set out at paragraphs 197 to 206 of the ASOC; and

b. otherwise denies the paragraph.

212. In response to paragraph 212 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 142–151, 160, 163, 164, 165, 168, 170, 170A, 175, 176, 177, 179, 184, 190 and 196 of this Defence; and

b. in the premises, denies the paragraph.

F. CLAIMS

F.1. Breach of the Policy by Insurer

213. In response to paragraph 213 of the ASOC, TMNF:

a. admits that IAL has not paid to Greensill Bank the amount pleaded in paragraph 212 of the ASOC; and

b. otherwise denies the paragraph.

214. TMNF denies paragraph 214 of the ASOC.

F1A. Misleading or deceptive conduct by IAL

214A-214AP. TMNF does not plead to paragraphs 214A to 214AP of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

F.2. Claims against BCC

Breach of Warranty of Authority

215. In response to paragraph 215 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 165, 168, 170, 177, 179 of this Defence;

b. insofar as the allegation concerns the Policy and the relevant endorsements:

i. does not know and therefore cannot admit whether Greensill Bank knew, or ought to have known, that Mr Brereton lacked authority to enter into the Policy and the relevant endorsements; and

ii. in the premises, does not know and therefore cannot admit whether Mr Brereton made the representations alleged or gave the BCC Warranties of Authority on behalf of BCC;

c. further or alternatively, if BCC did give the BCC Warranties of Authority in respect of any of the documents (which is not admitted), then:

i. it did so by reason of the Prior Misrepresentations and Non-Disclosures which were fraudulent for the reasons pleaded further in Annexure A;

ii. further and alternatively, it did so by reason of the misrepresentations and non-disclosures pleaded at paragraph 253 below; and

iii. TMNF notes that BCC has, by its defence in this proceeding, avoided and rescinded any collateral contract between it and Greensill Bank containing the BCC Warranties of Authority on the basis it entered into the contract by reason of Greensill Bank's fraudulent non-disclosures and misrepresentations for the reasons pleaded further in Annexure A.

216. In response to paragraph 216 of the ASOC, TMNF:

a. refers to and repeats paragraph 215 of this Defence; and

b. otherwise denies the paragraph.

217. TMNF denies paragraph 217 of the ASOC.

218. In response to paragraph 218 of the ASOC, TMNF:

a. says that, on 2 and 3 July 2020 , BCC and TMMA notified Greensill Bank's lead broker, Marsh Limited and/or Marsh Pty Ltd (**Marsh**), of concerns regarding Brereton's authority (**July Marsh Notifications**);

Particulars

i. Voice message from Mark Callahan (Executive Vice President of TMHCC and Director of TMMA) to Angus Ward (Marsh) on around 2 July 2020.

ii. Email from Mark Callahan to Angus Ward and others dated 2 July 2020 with subject line, "BCC on behalf of Tokio Marine" (CSA.0001.0015.0008).

iii. Phone conversation between Toby Guy (CEO of TMMA and Director of TMMA/BCC) and Julian Macey-Dare (Marsh) on around 3 July 2020.

b. repeats paragraphs 6B and 6C of the ASOC and says that the July Marsh Notifications were received by Marsh as agent for Greensill Bank;

c. says that, on 4 August 2020, BCC notified Greensill Bank that:

i. BCC had become aware that Brereton had sought to bind BCC to limits in relation to customers of the Greensill Group in circumstances where the customer limit was in excess of his delegated authority;

ii. as a result, BCC had commenced an investigation in relation to the dealings between the Greensill Group and Brereton;

iii. the investigation would consider the endorsements issued in relation to the Policy as well as all of Brereton's dealings with the Greensill Group in which he had acted outside the scope of his delegated authority;

iv. BCC and the Bond & Credit Company did not admit that they were on risk in relation to the documents under investigation; and

v. BCC would be in a position to inform the Greensill Group as to its position in relation to the documents under investigation upon the completion of the investigation;

Particulars

i. Letter from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 4 August 2020 (CSA.0001.0008.0327) (**4 August 2020 Letter**).

d. says that, by further letters dated 11 and 21 August 2020 (**11 and 21 August 2020 Letters**), BCC notified Greensill Bank that:

i. the investigation was continuing;

ii. BCC and the Bond & Credit Company did not admit that they were on risk in relation to the documents under investigation; and

iii. BCC and the Bond & Credit Company expressly reserved their rights;

Particulars

i. Letters from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 11 August 2020 (but sent on 14 August 2020) regarding Trade Credit Insurance Policy Numbers:

A. TW-06229 and TW-06230 (TMA.0001.0007.2353);

B. TW-06094 and TW-06095 (TMA.0001.0007.2352); and

C. TW-06165 and TW-06166 (TMA.0001.0007.2337).

ii. Letters from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 21 August 2020 regarding Trade Credit Insurance Policy Numbers:

A. TB-05370 and TB-05369 (TMA.0001.0007.2410);

B. TW-05411 and TW-05412 (TMA.0001.0007.2411);

C. TW-05782 and TW-05783 (TMA.0001.0007.2412);

D. TW-06259 and TW-06260 (TMA.0001.0007.2409); and

E. TW-06632 and TW-06633 (TMA.0001.0007.2413).

e. says that, on 28 August 2020, TMMA notified Greensill Bank that:

i. the investigation was continuing; and

ii. TMMA expressly reserved its rights, and specifically, any premium paid or right exercised under any of the documents under investigation was without prejudice to the right to either cancel, avoid, or pursue any other remedies pursuant to those documents once the investigation had been concluded;

Particulars

i. Letter from Mark Callahan to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 28 August 2020 (CSA.0001.0015.0006) (**28 August 2020 Letter**).

f. says that, on 1 September 2020, BCC notified Greensill Bank that:

i. the investigation was continuing; and

ii. TMNF and BCC reserved all rights in relation to the documents under investigation, including rights to cancel, avoid, or otherwise pursue remedies pursuant to those documents;

Particulars

i. Letter from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) dated 1 September 2020 (MMC_GCUK08_00022720) (**1 September 2020 Letter**).

g. says that each of the Delta IPUs referred to in paragraph 218 of the ASOC were allegedly acquired by Greensill Bank after receipt of:

i. the July Marsh Notifications;

ii. the 4 August 2020 Letter;

iii. the 11 and 21 August 2020 Letters;

iv. the 28 August 2020 Letter; and

v. the 1 September 2020 Letter

(together, the **BCC/TMMA Authority Notifications**);

h. denies that Greensill Bank's acquisition of the Delta IPUs after receipt of the BCC/TMMA Authority Notifications was in reliance upon the BCC Warranties of Authority or the BCC Authority Representations; and

g. otherwise denies the paragraph.

219. In response to paragraph 219 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 212, 215 and 218 of this Defence;

b. otherwise denies the paragraph; and

c. says further that if BCC breached any BCC Warranties of Authority (which is denied), Greensill Bank has not suffered any loss as:

i. it was not entitled to be indemnified by IAL for the reasons pleaded in paragraphs 206 and 212 of this Defence; and

ii. further or alternatively, the Greensill Group (including Greensill Bank) could not have obtained insurance coverage on the same or similar terms to the Policy from another insurer, had full disclosure been provided to the insurer.

219A. In response to paragraph 219A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 215 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 102A above, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 215 of the ASOC to the extent it occurred on or after 1 July 2019.

Misleading or Deceptive Conduct

220. In response to paragraph 220 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 212 and 215 of this Defence;

b. admits that Marsh included a signature block on each of the instruments to the effect that Mr Brereton was signing (purportedly) on behalf of BCC as authorised representative of IAL;

c. does not know and therefore cannot admit whether Mr Brereton's conduct in signing those documents was understood by Greensill Bank as a representation by BCC that it had authority to enter into the instruments on behalf of IAL; and

d. in the premises, does not know and therefore cannot admit whether the representations alleged was made.

221. In response to paragraph 221 of the ASOC, TMNF:

a. refers to and repeats paragraphs 218 and 220 of this Defence;

b. says that any representation made impliedly by virtue of the signature block on the instruments was a representation that, at the time the document was signed, BCC had authority; and

c. otherwise denies the paragraph.

222. In response to paragraph 222 of the ASOC, TMNF:

a. refers to and repeats paragraphs 220 and 221 of the Defence;

b. otherwise denies the paragraph;

c. in the alternative, says that if it made the BCC Authority Representations (which is not admitted):

i. admits that the BCC Authority Representations were conduct in relation to a financial service within the meaning of s 1041H of the Corporations Act or in trade or commerce in relation to financial services within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

ii. denies that the BCC Authority Representations were in trade or commerce within the meaning of s 18 of the Australian Consumer Law, by reason of operation of s 131A of the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**).

223. TMNF denies paragraph 223 of the ASOC.

224. TMNF denies paragraph 224 of the ASOC.

225. TMNF denies paragraph 225 of the ASOC.

226. In response to paragraph 226 of the ASOC, TMNF:

a. repeats paragraph 218 above; and

b. otherwise denies the paragraph.

227. In response to paragraph 227 of the ASOC, TMNF:

a. denies the paragraph; and

b. says further that Greensill Bank could not reasonably have relied on the BCC Authority Representations (if made) in circumstances where it had induced BCC to enter into the relevant instruments by reason of the Prior Misrepresentations and Non-Disclosures and by reason of the misrepresentations and non-disclosures pleaded at paragraph 253 below.

228. In response to paragraph 228 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 218 and 220 to 227 of this Defence; and

b. otherwise denies the paragraph.

228A. In response to paragraph 228A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 220 to 222 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 102A above, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 220 to 222 of the ASOC to the extent it occurred on or after 1 July 2019.

Contributory negligence

228AA. The loss or damage the subject of Greensill Bank's claim (if any) was at least partly a result of Greensill Bank's own failure to take reasonable care, with the result that, pursuant to s 1041(1B) of the Corporations Act, s 12GF of the ASIC Act and s 137B of the Competition and Consumer Act, the damages payable by TMNF (if any) should be

reduced to the extent to which the court thinks just and equitable having regard to Greensill Bank's share in the responsibility for the alleged loss and damage, on the following grounds:

a. at the time at which Greensill Bank acquired each of the assets the subject of this claim, Greensill Bank failed to undertake, or alternatively failed to undertake adequate, investigations and/or due diligence into:

   i. the transactions pursuant to which the assets were acquired; and

   ii. BCC/Brereton's authority on behalf of IAL as referred to in the ASOC;

Particulars

   A. BaFin, "BaFin orders moratorium on Greensill Bank AG" (3 March 2021) (press release).

   B. Financial Times, "German regulator files criminal complaint against Greensill Bank" (4 March 2021).

   C. Spiegel, "Heftige Kritik an Bafin wegen Greensill-Debakel" (4 March 2021).

   D. TMNF will seek discovery of the communications between Greensill Bank and GCUK, GCPL and Lex Greensill in relation to the circumstances in which Greensill Bank acquired assets referrable to the transactions pleaded in the ASOC, related due diligence (if any) undertaken by Greensill Bank and Greensill Bank's internal controls in relation to the assets they acquired. Further particulars may be provided after discovery and/or evidence.

b. Greensill Bank breached its supervisory duty adequately to identify, limit and monitor risks in the context of its business relationships with Lex Greensill and his companies (including GCUK) over a period of years;

Particulars

TMNF repeats the particulars to paragraph 228A(a) above.

c. Greensill Bank failed to perform any (or any adequate) analysis of the risk associated with the assets Greensill Bank purchased from GCUK;

Particulars

TMNF repeats the particulars to paragraph 228A(a) above.

d. Greensill Bank failed to have in place adequate organisational structures for the identification, review and management of investment risks;

Particulars

TMNF repeats the particulars to paragraph 228A(a) above.

e. Greensill Bank failed to realise, and failed to have adequate systems to enable it to realise, that GCUK was financing companies whose creditworthiness was doubtful;

Particulars

TMNF repeats the particulars to paragraph 228A(a) above.

f. Greensill Bank failed to enforce its rights to recover the debts owed by each Delta HoldCo and Liberty House (as pleaded to at 228D to 228E below);

Particulars

TMNF repeats the particulars to paragraph 228A(a) above.

Proportionate liability defences

228B. In further response to paragraphs 215 to 233 of the ASOC, TMNF says that to the extent that Greensill Bank has suffered loss by reason of any alleged contravening conduct by TMNF (which is denied), the claims are apportionable claims for the purposes of s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 78CB of the Competition and Consumer Act.

228C. Without admission and for the purposes only of this Defence, TMNF refers to and repeats the matters pleaded in paragraphs 105 to 128, 142 to 164, and 197 to 206 of the ASOC.

228D. By virtue of the matters pleaded in paragraph 228C above, each of the Delta HoldCos is a concurrent wrongdoer, as its acts or omissions in failing to repay the debts owed by it to GCUK or to Greensill Bank caused the damage or loss the subject of the claim:

a. the Delta HoldCo failed to pay a debt that has been assigned to Greensill Bank;

b. by virtue of its status as assignee of each such debt, Greensill Bank was and is entitled to enforce payment of those debts in an action for debt against the relevant Delta HoldCo; and

c. each Delta HoldCo is liable to Greensill Bank in an action for debt in respect of each unpaid debt owed by the Delta HoldCo as pleaded in the ASOC.

228E. By virtue of the matters pleaded in paragraph 228C above, Liberty House is a concurrent wrongdoer, as its acts or omissions in failing to repay the debts owed by each Delta HoldCo to GCUK or to Greensill Bank caused the damage or loss the subject of the claim:

a. Liberty House was and is liable, upon non-payment by a Delta HoldCo of its payment obligations, to make payment of the debt that had been assigned to Greensill Bank;

b. by virtue of its status as assignee of each such debt, Greensill Bank was and is entitled to enforce payment of those debts in an action for debt against Liberty House; and

c. Liberty House is liable to Greensill Bank in an action for debt in respect of each unpaid debt owed by a Delta HoldCo as pleaded in the ASOC.

228F. Lex Greensill, GCUK and GCPL are concurrent wrongdoers on the basis that they misled Greensill Bank by failing to disclose to Greensill Bank that they had made the Prior Misrepresentations pleaded in Annexure A to this Defence and that it was likely that the insurance purportedly obtained in respect of the assets acquired by Greensill Bank was liable to be avoided accordingly.

Particulars

A. TMNF refers to and repeats the Prior Misrepresentations and Non-Disclosures by and on behalf of the Lex Greensill, GCUK and GCPL alleged in Annexure A of this Defence.

B. Lex Greensill, GCUK and GCPL misled Greensill Bank by failing to disclose to Greensill Bank that they had made the Prior Misrepresentations and Non-Disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance purportedly obtained in support of the assets acquired by Greensill Bank was liable to be avoided accordingly.

228FA. If the matters pleaded by GBAG at paragraphs [6B], [6C] and [253] to [315] of its Statement of Claim are established, then:

a. Marsh Pty Ltd is a concurrent wrongdoer for the reasons alleged in those paragraphs;

b. Marsh Ltd is a concurrent wrongdoer because it:

i. provided the Marsh Broking Services (either together with or through Marsh Pty Ltd);

ii. engaged in the same conduct constituting the Marsh Authority Representations (as pleaded at paragraphs [279] to [280]);

iii. engaged in the same conduct constituting the Marsh Validity Representations (as pleaded at paragraphs [284] to [285]); and

iv. in the premises, is liable to GBAG for the same contraventions and/or tortious conduct as pleaded against Marsh Pty Ltd at [290] to [309].

228G. IAL is a concurrent wrongdoer, on the basis that if (which is not admitted) BCC and Brereton were not authorised by IAL to enter into the policies and endorsements the subject of this proceeding, at all material times up to 30 June 2019:

a. BCC and Brereton were representatives of IAL for the purposes of Division 6 of Part 7.6 of the Corporations Act;

b. IAL was responsible for the conduct of BCC and Brereton for the purposes of s 917B of the Corporations Act;

c. IAL engaged in acts or omissions, including (inter alia):

i. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of the authority granted to them;

ii. failing to ensure that BCC and Brereton did not purport to enter into the policies and endorsements the subject of this proceeding;

iii. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect of the policies and endorsements the subject of this proceeding;

d. the contravening conduct of BCC and Brereton alleged in Part F2 of the ASOC was conduct for which IAL was responsible for the purposes of s 917B of the Corporations Act;

e. the acts and omissions pleaded in subparagraphs (c) and (d) above caused the loss the subject of the claim; and

f. in the premises, IAL is liable to Greensill Bank for the loss suffered by it by reason of the contravening conduct of its representatives.

228H. In the premises, the liability of TMNF to Greensill Bank in relation to its claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of TMNF's responsibility for the damage or loss, and the court may give judgment against TMNF for not more than that amount, pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act and/or s 87CD of the Competition and Consumer Act.

Section 1041E Claim

229. TMNF denies paragraph 229 of the ASOC.

230. TMNF denies paragraph 230 of the ASOC.

231. In response to paragraph 231 of the ASOC, TMNF:

a. says that the allegation is embarrassing as it does not allege each of the elements of a contravention of s 1041E of the Corporations Act; and

b. otherwise denies the paragraph.

232. In response to paragraphs 218 and 232 of the ASOC, TMNF:

a. refers to and repeats paragraph 227 of this Defence; and

b. denies the paragraph.

233. In response to paragraphs 218 and 233 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 220 to 228 of this Defence; and

b. otherwise denies the paragraph.

233A. In response to paragraph 233A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 229 to 231 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 102A above, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 229 to 231 of the ASOC to the extent it occurred on or after 1 July 2019.

F.3. Claims against Greg Brereton

234-252A. In response to paragraphs 234 to 252A (save for paragraphs 238A, 247A and 252A, which are pleaded to below) of the ASOC, TMNF:

a. refers to and repeats paragraphs 215 to 233 of this Defence;

b. says that, for the reasons pleaded in paragraph 215 of this Defence, if Mr Brereton gave the Brereton Warranties of Authority, he is entitled to avoid or rescind any collateral contract between him and Greensill Bank containing those warranties on the basis he entered into the contract by reason of the Prior Misrepresentations and Non-Disclosures; and

c. otherwise does not know and therefore cannot admit the paragraphs, there being no allegations against TMNF.

238A. In response to paragraph 238A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 234 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 102A above, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 234 of the ASOC to the extent it occurred on or after 1 July 2019.

247A. In response to paragraph 247A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 239 to 241 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 102A above, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 239 to 241 of the ASOC to the extent it occurred on or after 1 July 2019.

252A. In response to paragraph 252A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 248 to 250 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 102A above, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 248 to 250 of the ASOC to the extent it occurred on or after 1 July 2019.

F4. Claims against Marsh and Marsh Pty Ltd

252B–315. TMNF does not plead to paragraphs 252B to 315 of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

G. Prior Misrepresentations and Non-Disclosures

253. In further answer to the entirety of the claim, TMNF says that if the Policy and relevant endorsements were validly entered into on behalf of IAL by BCC (which is not admitted) then Greensill Bank has not suffered any loss or damage by reason of the matters alleged against TMNF, because, by reason of the Prior Misrepresentations and Non-Disclosures by and on behalf of the insureds alleged in Annexure AA and Annexure A:

a. pursuant to cl 15.4 of the Policy or s 28(2) of the ICA, the Policy and any endorsements under the policy are liable to be avoided;

b. further or alternatively, pursuant to s 28(3) of the ICA, if the Policy and endorsements are not avoided, any right Greensill Bank has to indemnity is reduced to the amount that would place IAL in the position it would have been had the Prior Misrepresentations and Non-Disclosures not been made, that amount being nil; and

c. further or alternatively, pursuant to cl 9.7 of the Policy, Greensill Bank and/or GCPL had failed to comply with its duty of fair presentation and those failures

together or separately had a 'Material Policy Impact' such that IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings.

Date: 1~~6~~ May ~~2025~~ 2026



Signed by Matt James Andrews
Lawyer for the Fourth Respondent
By his partner, Raylee Joy Hartwell

This pleading was prepared by Justin Williams SC, Peter Braham SC, James Hutton SC, Julie Granger, Jerome Entwisle, Daniel Reynolds, ~~Kellie Dyon~~ Christopher Beshara and Stephen Thomson of counsel.

Certificate of lawyer

I, ~~Matt James Andrews~~ Raylee Joy Hartwell, certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and
(b) each denial in the pleading; and
(c) each non admission in the pleading.

Date: 1~~6~~ May ~~2025~~ 2026



Signed by Raylee Joy Hartwell as partner of
Matt James Andrews, Lawyer for the Fourth Respondent

ANNEXURE AA

THE GREENSILL GROUP'S MISREPRESENTATIONS AND NON-DISCLOSURES SPECIFIC TO THE LIBERTY DELTA RISK

The Liberty Delta risk as presented to BCC

1. At the time that the Greensill Group proposed the Liberty Delta risk to BCC, the Greensill Group represented that that risk had the following characteristics:

    a. the funding the subject of the Liberty Delta risk was in the nature of an "AR working capital facility" (**Liberty Delta AR Facility**), which would reflect the previous working capital facilities advanced to SSUK and to Liberty OneSteel (Primary) UK Pty Ltd;

    b. the funding the subject of the Liberty Delta AR Facility was derived from the amount of the expected future accounts receivable owed to the Delta OpCos by their Account Debtors;

    c. the Liberty Delta AR Facility would be backed by GCUK's acquisition of accounts receivable with recourse from the Delta HoldCos or their affiliates or funded against accounts receivable in which GCUK held a security interest;

    d. the maximum tenor for any account receivable purchased by GCUK under the Liberty Delta AR Facility would be 180 days;

Particulars

Email sent by Lex Greensill to Greg Brereton on 20 June 2019 at 6.47am [TOK.001.00104435].

Actual arrangements between the Greensill Group, the Delta OpCos and the Delta HoldCos

2. The true nature of the Liberty Delta risk was as follows:

    a. the financing structure the Liberty Delta AR Facility provided was effectively a term loan (and TMNF refers to and repeats paragraph 125 of this Defence in that regard);

    b. under the Liberty Delta AR Facility, GCUK advanced the full amount of the initial Drawdown Amount to each Delta HoldCo on a term basis without any reference or regard to amounts actually owed to the Acquired Group (as defined in the Delta

IPA Side Letters) by any Account Debtors, as is pleaded at paragraph 117 of the ASOC;

c. between around 90 to 95% of the Delta OpCos' Accounts Receivable were already the subject of trade credit insurance provided by third-party trade credit insurers;

d. funding was to be provided to the Liberty HoldCos under the Liberty Delta AR Facility on the agreement and understanding, between Lex Greensill on behalf of the Greensill Group and Sanjeev Gupta on behalf of Liberty House and the Delta HoldCos, that the funding advanced under the facility could not be withdrawn nor required to be repaid by GCUK other than by giving at least three years' notice, regardless of the terms of the written contractual documents purporting to regulate the Liberty Delta AR Facility (including the Delta IPAs and related documents); and

Particulars

i. Lex Greensill gave repeated oral commitments to Mr Gupta that GFG Alliance's funding could not be withdrawn without at "least three years' warning and notice", whatever the written terms might state, and would often say to Mr Gupta words to the effect "you don't have to worry about the documents" and "the documents are irrelevant".

ii. Witness Statement of Mr Sanjeev Gupta dated 22 August 2022 and filed in High Court of Justice proceedings CR-2021-000595.CR-2021-000597 and CR-2021-000622.

iii. Letter sent for and on behalf of the Delta HoldCos to Grant Thornton UK LLP dated 7 April 2021.

e. a significant proportion of the funds advanced under the Liberty Delta AR Facility were proposed to be used, and were used, to repay existing debts owed by the Sanjeev Gupta's GFG Alliance group to GAM Holding AG (**GAM**).

Conduct of Lex Greensill in procuring BCC to bind Liberty Delta Risks

3. On or around 20 June 2019, Lex Greensill, on behalf of the Greensill Group, procured BCC to provide insurance cover to the Greensill Group by issuing the Policy and the Liberty Delta Master Policy in respect of funds advanced under the Liberty Delta AR Facility.

Particulars

Email sent by Lex Greensill to Greg Brereton on 20 June 2019 at 6.47am [TOK.001.00104435], and the prior conversations referred to in that email.

Non-disclosures and misrepresentations in respect of the Liberty Delta Risks

4. The Greensill Group was aware of the matters pleaded in paragraph 2 of this Annexure concerning the actual relationship between the Greensill Group, the Delta OpCos and the Delta HoldCos.

Particulars

i. The programs of insurance in respect of the the Delta HoldCo Customer Endorsements pleaded at paragraph 165 above (**Liberty Delta Risks**) were initially procured by direct communications between Lex Greensill and Greg Brereton and Lex Greensill's knowledge in relation to those programs of insurance is to be imputed to the Greensill Group.

ii. Greensill Credit Application Redacted Report – Amendment – Liberty Ostrava Limited – 224418870, dated 16 July 2020

iii. Lex Greensill was party to the agreement and understanding with Sanjeev Gupta referred to in paragraph 2(d) above;

iv. Lex Greensill's knowledge of the matters pleaded in paragraph 2 of this Annexure concerning the actual relationship between the Greensill Group, the Delta HoldCos and Delta OpCos is otherwise to be inferred from his senior position within the Greensill Group.

v. Letter sent for and on behalf of the Delta HoldCos to Grant Thornton UK LLP dated 7 April 2021.

5. When the Liberty Delta AR Facility was first presented to BCC on or around 20 June 2019, the Greensill Group misrepresented that the facility would have each of the characteristics set out in paragraph 1 above, whereas the true arrangements were as set out in paragraph 2 above (**the Liberty Delta Misrepresentations**).

6. The Greensill Group did not disclose to Greg Brereton or any representative of BCC or IAL in the course of seeking to procure cover in respect of the Liberty Delta Risks under the Policy and Liberty Delta Master Policy or otherwise that:

a. the actual arrangements between the Delta OpCos, the Delta HoldCos and GCUK were as pleaded in paragraph 2 of this Annexure;

b. in the premises, the Liberty Delta AR Facility was:

i. not proposed to be operated as an AR working capital facility;

ii. not an accounts receivable facility at all;

iii. not a working capital facility; and/or

iv. in the nature of long-term enterprise finance lending on an interest only basis unconnected with any rights to actual accounts receivable owing to the Delta OpCos; and

c. by reason of the matters pleaded in subparagraphs a. and b. above, the risk being insured under the Liberty Delta Risks in respect of the Liberty Delta AR Facility was:

i. not the risk of non-payment of accounts receivable by Account Debtors in respect of goods or services supplied by the Delta OpCos or other Sellers, where the relevant credit risk was that of the Account Debtors; but rather

ii. the risk of non-payment by the Delta HoldCos of the long-term enterprise finance lending advanced by the Greensill Group, where the relevant credit risk was that of the Delta HoldCos and of Liberty House under the Liberty House IPA Guarantee;

d. that a significant proportion of the funds advanced under the Liberty Delta AR Facility were proposed to be used, and were used, to repay existing debts owed by Sanjeev Gupta's GFG Alliance group to GAM.

7. The Greensill Group did not disclose to Greg Brereton or any representative of BCC or IAL, in the course of seeking to procure cover in respect of the Liberty Delta Risks under the Policy and Liberty Delta Master Policy or otherwise, that substantial funds advanced under the Liberty Delta AR Facility were intended to be used, and were used, to repay existing debt with GAM, rather than for the purpose of providing the Delta OpCos working capital secured by accounts receivable.

8. The Greensill Group did not disclose to Greg Brereton or any representative of BCC or IAL, in the course of seeking to procure cover in respect of the Liberty Delta Risks under

the Policy and Liberty Delta Master Policy or otherwise, that the Liberty Delta Misrepresentations were false when made.

9. The non-disclosures by the Greensill Group alleged in paragraphs 5 to 7 of this Annexure (or alternatively, such of them as are established) (**Liberty Delta Non-Disclosures**) were material to the decision to underwrite the Liberty Delta Risks.

Particulars

i. The nature of the lending under the Liberty Delta AR Facility, in particular the true nature of the credit risk assumed by the Greensill Group and insured under the Policy, was a significant matter in assessing whether the Liberty Delta Risks should be bound.

ii. The Delta HoldCos' intended use of the funds advanced to them under the Liberty Delta AR Facility were relevant to the financial standing of the Delta HoldCos and were thus material to an assessment of whether the Liberty Delta Risks should be bound.

iii. The Liberty Delta Non-Disclosures also bore directly upon the integrity and trustworthiness of the Greensill Group entities (GCPL, GCUK and Greensill Bank) as insureds.

10. Each of the non-disclosures and/or misrepresentations pleaded in this annexure, together or separately, was a failure by Greensill Bank and/or GCPL to comply with its duty of fair presentation pursuant to cl 7.1 of the Policy.

11. Those failures together or separately had a 'Material Policy Impact' as defined in Schedule 1 to the Policy in that they:

a. materially increased the likelihood of the alleged Loss the subject of these proceedings occurring;

b. materially increased the amount of such Loss;

c. materially decreased the likely amount of any recovery in respect of such Loss; or

d. any combination of the above.

12. In the premises pleaded at paragraph 253 of this Defence, IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings.

13. TMNF is continuing to investigate the circumstances in which the misrepresentations and non-disclosures the subject of this Annexure AA were made, including as to whether these misrepresentations and non-disclosures were made fraudulently, and may seek to amend Annexure AA in due course to the extent that material obtained on discovery or in evidence so requires.

Schedule

No. NSD 602 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

Second Applicant	Dr Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Respondent	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent	Greg Brereton
Fourth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd (ARBN 000 438 291)

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent:	Greensill Capital (UK) Ltd
Second Cross-respondent:	Greensill Bank AG
Third Cross-respondent:	Greensill Capital Pty Ltd (In Liquidation)

BCC/TMNF FIRST CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
First Cross-respondent:	Marsh Pty Ltd (ACN 004 651 512)
Second Cross-respondent:	Marsh Limited

BCC/TMNF SECOND CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

IAL CROSS-CLAIM

Cross-claimant:	Insurance Australia Limited (ACN 000 016 722)
First Cross-respondent:	Marsh Limited
Second Cross-respondent:	Marsh Pty Ltd (ACN 004 651 512)
Third Cross-respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Fourth Cross-respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)