



**DEBENTURE**

**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD.  
(Company No. 271809 K)**

**AND**

## DEBENTURE

Issued in accordance with the authorities stated in Section 1 of **Schedule I**

**THIS DEBENTURE** is made on the day and year stated in Section 2 of **Schedule I**

Between

**UNITED OVERSEAS BANK (MALAYSIA) BHD.** (Company No. 271809 K) a company incorporated in Malaysia and having a place of business as stated in Section 3 of **Schedule I** (hereinafter called “the **Bank**” which expression shall include its successor in title and assign) of the one part

And

the party whose name and description are stated in Section 4 of the **Schedule I** hereto (hereinafter called to as “the **Issuer**” which expression shall include its successor in title) of the other part.

### ARTICLE I

#### RECITALS

##### SECTION 1.1 APPLICATION FOR BANKING FACILITIES

- 1.1.1 The party whose name and description are stated in Section 5 of **Schedule I** hereto (hereinafter referred to as “the **Borrower**” which expression shall include its successor in title), the Borrower applied to the Bank and the Bank has pursuant to and in accordance with the agreement, details of which are stated in **Schedule II** hereto and upon the terms and subject to the conditions herein contained (hereinafter called to as “the **Facilities Agreement**”) agreed to grant or continue to make available to the Borrower the Banking Facilities (which expression shall, where the context so admits, include any part or portion thereof and the balance thereof outstanding from time to time) to or for the benefit of the Borrower or to grant further time or other indulgence to the Borrower.
- 1.1.2 In consideration of the above, the Issuer executes this Debenture as security for the repayment of the Indebtedness together with all other monies covenanted to be paid under the Banking Facilities.

### ARTICLE II

#### DEFINITIONS AND INTERPRETATION

##### SECTION 2.1 DEFINITIONS

In this Debenture unless the context otherwise requires the following words and expressions have the meanings given below:-

- “**banking facility**” : Each or any of the Banking Facilities.
- “**Banking Facilities**” : Some or all of the loans, advances, credit or banking facilities agreed to be granted or continued to be made available in or for the benefit of the Borrower

from time to time and include any part or the balance thereof outstanding from time to time.

- “Business Day”** : A day on which banks are open in the Federal Territory or such other states in Malaysia, as the case may be, for transaction of business of the nature required by this Debenture.
- “Charged Assets”** : All or any or part of the assets, properties, revenues, undertakings, goodwill and rights both present and future of the Issuer charged under Section 6.1 herein
- “Commitment”** : The commitment of the Bank to make available the Banking Facilities upon the terms and subject to the conditions set out in the letter/agreement/document stated in **Schedule II** hereto and of this Debenture.
- “Companies Act”** : The Companies Act, 2016, including any statutory amendments modifications re-enactment or substitution thereof.
- “Event of Default”** : Any of the events or state of affairs specified in Section 11.2.
- “relevant Prescribed Rate”** : The different rates of interest or discount or commission stated in the Facilities Agreement payable for the different types of Banking Facilities granted by the Bank and shall include such other rate rates of interest or discount or commission as may from time to time be substituted or varied therefore at the Bank’s discretion in the manner hereinafter provided, having regard to, inter alia, the nature of each of the Banking Facilities.
- “Ringgit” or “RM”** : The lawful currency of Malaysia.
- “Security Party”** : A party, including the Issuer and the Borrower, who now or hereafter has guaranteed or provided security or given indemnity for the Banking Facilities.
- “subsidiary”** : A subsidiary within the meaning of Section 4 of the Companies Act and in relation to the Borrower, any company which is for the time being such a subsidiary and the term “subsidiaries” shall mean two or more of such subsidiary.
- “taxes”** : All taxes imposts levies duties charges fees deductions and withholdings and interest thereon and penalties with respect thereto and any restriction and condition resulting therein.

## **SECTION 2.2 DEFINITIONS IN THE FACILITIES AGREEMENT**

Except as otherwise defined in this Debenture or where the context otherwise requires, all expressions used in this Debenture shall have the same meanings as those assigned to such expressions by the Facilities Agreement with such modifications as shall render the same applicable to the Issuer.

**SECTION 2.3 INTERPRETATION**

- 2.3.1 Words importing the singular number include the plural number and vice versa.
- 2.3.2 Words importing the masculine gender include feminine and neuter genders and vice versa.
- 2.3.3 The headings to Articles and Sections in this Debenture are inserted for convenience only and shall be ignored in construing the provisions of this Debenture.
- 2.3.4 Reference to Articles Sections Schedules and Appendices are to be construed as references to Articles Sections Schedules and Appendices to this Debenture.
- 2.3.5 References to any statute or legislation include any statutory amendment modification re-enactment or substitution thereof.
- 2.3.6 Any reference in this Debenture to an Event of Default includes a reference to an event which, with the giving of notice and/or the lapse of time and/or a determination made under the relevant Section, would constitute an Event of Default.
- 2.3.7 The Schedules hereto shall be taken read and construed as essential parts of this Debenture.
- 2.3.8 Where the term “the Borrower and/or the Issuer” is used or where there are two (2) or more persons or parties included or comprised in the terms “the Borrower” or “the Issuer” or “the Borrower and the Issuer”, agreements, covenants, terms, stipulations, undertakings, representations and warranties expressed to be made by and on the part of the Borrower and/or the Issuer, as the case may be, shall be deemed to be made by and binding upon such persons or parties jointly and severally.
- 2.3.9 The expressions “the Borrower” and “the Security Party” in this Debenture includes persons for the time being deriving title under the Borrower and/or the Security Party respectively, and no change of any sort in relation to or affecting the Borrower and/or the Security Party will in any way affect the security, liabilities, and/or obligations created by this Debenture in relation to any transaction, whether past, present, or future.
- 2.3.10 A reference to “this Debenture” or other similar reference refers to this Debenture as a whole, and not to any particular provision of this Debenture but shall include any supplemental agreements, amendments, variations and changes made to this Debenture.
- 2.3.11 Where the Borrower and/or the Issuer is a company, any references relating to insolvency / bankruptcy will be read as references relating to the winding-up, liquidation, amalgamation or reconstruction of the Borrower and/or the Issuer;
- 2.3.12 Where the expression “the Borrower and/or the Issuer” is used, all agreements and other matters expressed to be made by or on the part of the Borrower and/or the Issuer are deemed to be made by or binding upon the Borrower and/or the Issuer jointly and severally.

**ARTICLE III****REPRESENTATIONS AND WARRANTIES****SECTION 3.1 REPRESENTATIONS AND WARRANTIES**

The Issuer hereby represents and warrants to and undertakes with the Bank as follows:-

- 3.1.1 that the Issuer is a company duly incorporated under the laws of the country of its incorporation as a separate legal entity and has full power and authority to own its assets, including the Charged Assets, and carry on its business as it is now being carried on;
- 3.1.2 that the Issuer has the power or capacity to execute deliver and perform the terms of this Debenture and the Issuer has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Debenture;
- 3.1.3 that this Debenture constitutes or when executed, will constitute the legal valid and binding obligations of the Issuer in accordance with its terms;
- 3.1.4 that the execution, delivery and performance of this Debenture by the Issuer:-
  - (a) will not exceed the powers granted to the Issuer or violate the provisions of:-
    - (i) any law or regulation or any order or decree of any governmental authority agency or court to which it is subject; or
    - (ii) its constitution or Memorandum and Articles of Association; or
    - (iii) any mortgage, contract or other undertaking or instrument to which it is a party or which is binding upon it or any of its assets;
  - (b) will not result in the creation or imposition of or any obligation to create or impose any mortgage, lien, pledge or charge on any of its assets pursuant to the provisions of any such mortgage, contract or other undertakings or instruments;
- 3.1.5 that all consents, licences, approvals, authorizations, orders and exemptions of any Ministry agency department or authority in Malaysia and the country of the Issuer's incorporation which are required or advisable for or in connection with the execution, delivery, performance, legality or enforceability of this Debenture have been obtained and are in full force and effect;
- 3.1.6 that the Issuer and all Security Party are not in default under any agreement to which they are a party or by which they are bound and no litigation, arbitration or administrative proceedings are presently current or pending or threatened which default, litigation, arbitration or administrative proceedings, as the case may be, might materially affect their solvency or might affect their ability to perform their obligations;
- 3.1.7 that no mortgage, charge, pledge, lien or other encumbrance exists on or over any of the Charged Assets or any part thereof;

- 3.1.8 that the accounts of the Issuer as delivered to the Bank:-
- (a) were prepared in accordance with accounting principles and practices generally accepted in Malaysia and consistently applied and have been prepared, examined, reported on and approved in accordance with all procedures required by law and the Constitution or Memorandum and Articles of Association of the Issuer;
  - (b) together with the notes thereto, give a true and fair view of the financial condition and operations of the Issuer as at the date of such accounts and for the period then ended; and
  - (c) together with those notes, disclose or reserve against the liabilities (contingent or otherwise) of the Issuer as at the date of the said accounts and all material unrealized or anticipated losses from any commitment entered into by it and which existed on such date;
- 3.1.9 that there has been no material adverse change in the financial condition or operations of the Issuer and the Borrower since the Borrower first applied for the Banking Facilities;
- 3.1.10 that the Issuer is the sole and beneficial owner of the Charged Assets and that its title to each of the Charged Assets is regular and that the Issuer's beneficial interests therein are free from defects and encumbrances whatsoever;
- 3.1.11 that the financing by the Bank hereunder and the Bank's agreement to make available or to continue to make available the Banking Facilities to the Borrower and the acceptance by the Bank of the Charge Assets as securities for the Banking Facilities will not contravene or be in breach of any law, legislation, subsidiary legislation or regulation including, without limiting the generality of the foregoing, the provisions of Section 47 of the Financial Services Act 2013 or any other provisions thereof or Section 123 of the Companies Act or any other provisions thereof or any lending limit or restriction that may be imposed upon the Bank from time to time by Bank Negara Malaysia or such other authority having jurisdiction over the Bank or any of the guidelines or directives or policies introduced by Bank Negara Malaysia from time to time; and
- 3.1.12 that no Event of Default referred to in Section 11.2 herein has occurred or is continuing or will occur as a result of the Bank making any advance or continuing to make available the Banking Facilities or any part thereof to the Borrower.

### **SECTION 3.2 CONTINUING NATURE OF REPRESENTATIONS AND WARRANTIES**

The Issuer shall be deemed to represent and warrant to the Bank prior to and on each of the dates of the utilisation by the Borrower of the Banking Facilities:-

- 3.2.1 that the representations and warranties contained in Section 3.1 are true and accurate in all respects as if made on each such date and as if repeated by reference to the then existing circumstances except that each reference to accounts in Section 3.1.8 shall be construed as a reference to the then latest available annual accounts of the Issuer; and
- 3.2.2 that no Event of Default and no event which with the giving of notice or passing of time would constitute as Event of Default has occurred.

### **SECTION 3.3 WAIVER OF BREACH OF REPRESENTATIONS AND WARRANTIES**

It is hereby expressly acknowledged and declared that the representations and warranties contained in Section 3.1 are inserted for the sole benefit of the Bank and the Bank may at its sole and absolute discretion waive in whole or in part with or without terms or conditions any breach of any of the representations and warranties therein contained without prejudicing the rights of the Bank hereunder.

## **ARTICLE IV**

### **AGREEMENT IN RELATION TO BANKING FACILITIES**

#### **SECTION 4.1 COVENANT TO PAY**

4.1.1 In consideration of the Bank agreeing to grant or continuing to grant or make available to and for the benefit of the Borrower and/or the Issuer the Banking Facilities to such an extent and for so long as the Bank may think fit, each of the Borrower and the Issuer hereby covenants and undertakes that it will ON DEMAND pay to the Bank the Indebtedness together with:-

- (a) all interests accruing on the principal (as well after as before any demand or judgment and irrespective of whether or not the banker customer relationship between the Bank and the Borrower has ceased or been terminated) to the date of full payment at the Bank the relevant Prescribed Rate calculated in the manner as may be agreed by the Borrower from time to time having regard to, inter alia, the nature of each banking facility from such date or dates as may be selected by the Bank to the date of full payment;
- (b) commission, discount, commitment fee and other banking charges and all costs, charges and other expenses which the Bank may charge in respect of any of the matters aforesaid or which the Bank may pay or incur in registering this Debenture or in perfecting the present security or in enforcing or obtaining payment of such monies (including but not limited to legal fees on a solicitor and client basis) or in paying any costs or expenses whatsoever in respect of or in defending, prosecuting or otherwise howsoever taking part in or attending at (whether on a watching brief as observer or otherwise howsoever) any action, enquiry, hearing, suit or other proceedings whatsoever affecting any of the benefits, rights, title and interest in, to and under the Charged Assets; and
- (c) all other payments and sums hereinafter mentioned or stipulated on a full indemnity basis and other usual banker's charges.

#### **SECTION 4.2 FURTHER ADVANCES**

4.2.1 The Bank may from time to time at the request of the Borrower and at the Bank's absolute discretion, advance to the Borrower without any reference to the Issuer such further sum or sums of money beyond the limit approved by the Bank as the Bank may deem fit and the Borrower and as applicable, the Issuer shall pay interest at such rate or rates as the Bank may prescribe over and above the relevant Prescribed Rate on such further sum or sums so advanced and all interest and such further sum or sums so advanced shall form part of the Indebtedness and hereby secured by this Debenture.

- 4.2.2 The Banking Facilities granted or to be granted to the Borrower may be reviewed from time to time and at any time by the Bank and nothing in these presents contained shall be deemed to impose on the Bank any obligation either in law or in equity to make or continue to make any advances or to afford any other accommodation or facility whatsoever to the Borrower.

## ARTICLE V

### CONDITIONS PRECEDENT

#### SECTION 5.1 CONDITIONS PRECEDENT FOR AVAILABILITY OF BANKING FACILITIES

The Issuer acknowledges and agrees that the obligation of the Bank to make available the Banking Facilities is subject to the fulfillment of the conditions precedent stated in the Facilities Agreement and that:-

- 5.1.1 this Debenture shall have been duly executed and duly stamped and lodged with the Companies Commission of Malaysia for registration pursuant to the provisions of Section 352 of the Companies Act;
- 5.1.2 the Bank shall have received in form and substance satisfactory to the Bank and its legal advisers, copies (in as many number as may be requested by the Bank) of the following documents, certified as true and correct by a director or the secretary of the Issuer:-
- (a) all authorizations approvals and consents referred to in Section 3.1.5 including, without limitation, a resolution by the directors and if required by the Bank, the shareholders of the issuer authorizing the execution of this Debenture under the Issuer's Common Seal;
  - (b) the certificate of incorporation of the Issuer;
  - (c) the constitution or Memorandum and Articles of Association of the Issuer;
  - (d) specimen signatures, authenticated in such manner as the Bank may require, of the persons authorized to execute this Debenture;
- 5.1.3 there shall have been obtained all governmental corporate creditors' shareholders' or other authorizations licences approvals and consents which are necessary or expedient for the execution and registration of this Debenture and the carrying of the business of the Issuer;
- 5.1.4 a search being made by the Bank's Solicitors with the Companies Commission of Malaysia at the time this Debenture is lodged for registration under Section 352 of the Companies Act or as soon as it may be practicable thereafter confirming that no charges, interests or encumbrances have been registered with the Companies Commission of Malaysia over any of the Charged Assets or any part thereof or interest therein prior to the lodging of this Debenture;
- 5.1.5 the Borrower and the Issuer shall have observed and performed or caused the observance and performance of any additional covenants and conditions set out in any letter of offer given by the Bank to the Borrower from time to time;
- 5.1.6 the Issuer shall have executed an irrevocable Power of Attorney in the form and substance prescribed by the Bank, appointing the Bank and any and every



Receiver and/or Manager or Receivers and/or Managers (“Receiver and Manager”) appointed under Section 11.3.3 herein and his or their substitute or substitutes the attorney or attorneys of the Issuer in order to more effectively carry out the intents and purposes of this Debenture;

- 5.1.7 if any of the Charged Assets shall consist of vehicles, the Issuer shall have deposited with the Bank the original registration cards for all such vehicles;
- 5.1.8 if any of the Charged Assets shall be affixed attached or secured to any land or premises and:-
- (a) if such land or premises is the subject of a charge or lien, the Issuer shall have obtained and delivered to the Bank a letter from the chargee or lienholder containing the acknowledgement, confirmation and undertaking as referred to in Section 11.9.2(b) below;
  - (b) if the Issuer is not the owner of such land or premises, the Issuer shall have obtained and delivered to the Bank an assent in writing from the owner thereof as referred to in Section 11.9.2(c) below;
- 5.1.9 the Borrower and the Issuer shall have satisfied and complied with such additional conditions or terms as the Bank may from time to time and at its sole and absolute discretion impose or stipulate or prescribe.

Pending the fulfillment in manner satisfactory to the Bank of the conditions hereinbefore stipulated, the Bank may at its absolute discretion terminate the Banking Facilities or suspend the disbursement of the Banking Facilities or any part thereof.

## **SECTION 5.2 THE BANK NOT OBLIGED TO ALLOW UTILISATION IN CERTAIN EVENTS**

In addition to and not in derogation of any of the provisions herein contained, the Bank shall not be under any obligation to make or to continue to make the Banking Facilities available on the occurrence of any of the following events:-

- 5.2.1 any representation or warranty contained in Section 3.1 is not true and correct in a material respect as if made on each of the dates on which the Banking Facilities is utilized;
- 5.2.2 an Event of Default or any event which with the giving of notice or lapse of time or both would constitute an Event of Default having occurred at the date of utilisation of the Banking Facilities; and
- 5.2.3 any extraordinary circumstances or change of law or other government action shall have occurred which makes it improbable that the Borrower and/or the Issuer will be able to observe and perform the covenants and obligations on its part to be observed and performed under Facilities Agreement and/or this Debenture respectively.

## **SECTION 5.3 WAIVER OF CONDITIONS PRECEDENT**

It is hereby expressly acknowledged and declared that the terms and conditions contained in Sections 5.1 and 5.2 are inserted for the sole benefit of the Bank and may be waived by the Bank in whole or in part with or without terms or conditions at the Bank's sole and absolute discretion without prejudicing the rights of the Bank hereunder.

**ARTICLE VI****SECURITY****SECTION 6.1 FIXED AND FLOATING CHARGES**

For better securing the payment of monies and liabilities in the Facilities Agreement and this Debenture contained, and as a continuing security for the payment of all monies and the discharge of all obligations and liabilities hereby covenanted to be paid or otherwise hereby secured, the Issuer as beneficial owner of the assets below ("**Charged Assets**") hereby charges to the Bank as follows:-

6.1.1 by way of a **first fixed charge** over:-

- (a) all those immovable properties of the Issuer both present and future and shall include all buildings and fixture (including trade fixture) from time to time on any such properties;
- (b) all the plant, machinery, vehicles, office equipment, computers and office and other equipment of the Issuer, both present and future (excluding stock in trade of the Issuer) wheresoever situate, together with all accessories and parts, fuels and tools pertaining thereto now or hereafter or from time to time acquired by the Issuer;
- (c) all stocks share bonds and securities of any kind whatsoever whether marketable or otherwise and all other interests including but not limited to loan capital of the Issuer both present and future in any company firm consortium or entity wheresoever situate including all allotments accretions offers rights benefits and advantages whatsoever at any time accruing offered or arising in respect of or incidental to the same and all stocks shares rights monies or property accruing thereto or offered at any time by way of conversion redemption bonus preference option or otherwise in respect thereof;
- (d) all book and other debts revenues and claims both present and future (including things in action which may give rise to a debt revenue or claim) due or owing or which may become due or owing to or purchased or otherwise acquired by the Issuer and the full benefit of all rights and remedies relating thereto including but not limited to any negotiable or non-negotiable instruments guarantees indemnities debentures legal and equitable charge and other security reservation of proprietary rights rights of tracing lines and all other rights and remedies of whatsoever nature in respect of the same;
- (e) the uncalled capital goodwill and all patents patent applications trade marks, trade names, registered designs and copyrights and all licenses and ancillary and connected rights relating to the intangible property both present and future of the Issuer;

6.1.2 by way of a **first floating charge** over the undertaking and all other property assets and rights of the Issuer whatsoever and wheresoever both present and future including but not limited to the stocks in trade of the Issuer wheresoever situate (which is or may be from time to time while this Debenture is in force) comprised in the property and undertaking of the Issuer and in the premises, the Charged Assets in Section 6.1.1 described above (if and in so far as the charges thereon herein contained shall for any reason be ineffective as fixed charges).

**SECTION 6.2 CONVERSION OF FLOATING CHARGES INTO FIXED CHARGES**

6.2.1 The Bank may at any time by notice in writing to the Issuer forthwith convert the said floating charge into a fixed charge as regards any of the Charged Assets specified in the said notice.

6.2.2 If:-

- (a) the Issuer charges, pledges or otherwise encumbers in favour of any third party, whether by way of a fixed or floating security any of the Charged Assets described in Section 6.1 or attempts to do so without the prior consent in writing of the Bank;
- (b) any person attempts to levy any distress execution sequestration or other process against any of the floating Charged Assets;
- (c) any floating charge, whether created before or after the date hereof shall crystallize over any of the floating Charged Assets; or
- (d) a Receiver and Manager is appointed in respect of the Issuer or in respect of all or any part of the floating Charged Assets,

then in any of such event or events in respect of any or all of the particular floating Charged Assets the floating charge herein shall crystallize as regards those particular floating Charged Assets but remain floating as regards the rest.

**SECTION 6.3 RESTRICTION AGAINST OTHER CHARGES**

6.3.1 Save and except for the charges and securities created herein, the Issuer shall not during the subsistence of this Debenture without the consent in writing of the Bank execute or permit to subsist any form of charge mortgage debenture (whether fixed or floating) pledge or lien in respect of any of the Charged Assets (save any lien arising by operation of law in the ordinary course of trading).

6.3.2 Save and except for the charges and securities created herein, the Issuer hereby covenants that it will not, without the prior consent in writing of the Bank:-

- (a) sell assign discount factor pledge charge or otherwise dispose of all or any of the book debts, revenue and claims both present and future (including things in action which may give rise to any debt revenue or claim) due or owing or which may become due or owing to or purchased or otherwise acquired by the Issuer or deal with the same other than to get in and realize the same in the ordinary course of its business in accordance with Section 8.1.8 herein;
- (b) part with possession or transfer sell lease or otherwise dispose of the Charged Assets or any part thereof or attempt or agree to do so (except in the case of stock in trade which may be sold at market value in the normal course of trading as now conducted for the purpose of carrying on its business).

**SECTION 6.4 COVENANT TO PERFECT AND PROVIDE FURTHER SECURITY**

6.4.1 The Issuer shall upon request by the Bank promptly correct any defect error or omission which may at any time hereinafter be discovered in the execution

acknowledgment delivery or registration hereof and shall execute acknowledge and deliver to the Bank and shall file and register such further documents and assurances and take such further action as the Bank may from time to time reasonably request in order to more effectively carry out the intent and purposes of this Debenture and to establish protect and perfect this Debenture.

- 6.4.2 The Issuer shall at any times if and when required by the Bank so to do execute in favour of the Bank or as the Bank shall direct such legal or other mortgages, charges, pledges, assignments, transfers or agreements as the Bank shall require of and on all the Issuer's estates rights titles and interests in any of the Charged Assets now belonging to or which may hereafter be acquired by or belong to the Issuer (including any vendor's lien) and the benefit of all licences held in connection therewith and to apply to such relevant authorities as may be necessary to secure all monies and liabilities hereby agreed to be paid or intended to be hereby secured, such mortgages charges pledges assignments transfers or agreements to be prepared by or on behalf of the Bank at the cost of the Issuer and/or the Borrower and to contain all such terms and conditions for the benefit of the Bank as the Bank may reasonably require.
- 6.4.3 The Issuer shall at any time if and when required by the Bank so to do, deposit with the Bank the documents of title relating to all or any debentures shares stocks or other investments or securities registered in the name of the Issuer or otherwise belonging to the Issuer. Such deposit may be by way of collateral security for the repayment of monies and liabilities hereby secured and may also or otherwise be for the purpose of securing any other monies owing to the Bank and not secured hereby.

## **SECTION 6.5 CONTINUING SECURITY**

The security herein created is expressly intended to be and shall be a continuing security for all monies whatsoever now or hereafter from time to time owing to the Bank by the Borrower and/or the Issuer whether alone or jointly and severally with another or others and whether as principal or surety notwithstanding that the Borrower and/or the Issuer may at any time or times cease to be indebted to the Bank for any period or periods and notwithstanding:-

- 6.5.1 any account or accounts of the Borrower and/or the Issuer with the Bank may for any cause whatsoever cease to be current and notwithstanding any settlement or closure of account or accounts or otherwise;
- 6.5.2 any change by amalgamation consolidation or otherwise which may be made in the constitution of the company by which the business of the Borrower and/or the Issuer is for the time being carried on;
- 6.5.3 the liquidation of the Borrower and/or the Issuer whether voluntary or compulsory.

## **ARTICLE VII**

### **PAYMENTS**

#### **SECTION 7.1 PAYMENTS**

- 7.1.1 Where any payment is due to be made by the Issuer under the Debenture on a day which is not a Business Day the due date for payment shall be extended to the next following Business Day unless such Business Day falls in the next

calendar month in which case payment shall be made on the immediately preceding Business Day.

- 7.1.2 The Issuer shall not be entitled to deduct or set-off or counterclaim any amount which is owed or said to be owed by the Bank to it from any amount due from the Borrower and/or the Issuer under this Debenture.
- 7.1.3 All payments by the Issuer under this Debenture, shall be made in full without any deduction or withholding (whether in respect of set-off counterclaim duties taxes charges or otherwise whatsoever) unless the deduction or withholding is required by law, in which event the Issuer shall:-
- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
  - (b) forthwith pay to the Bank such additional amount so that the net amount received by the Bank will equal the full amount which would have been received by it had no such deduction or withholding been made;
  - (c) pay to the relevant taxation or other authorities within the period for payment permitted by applicable law the full amount of the deduction or withholding (including, but without prejudice to the generality of the foregoing, the full amount of any deduction or withholding from any additional amount paid pursuant to this Section 7.1.3); and
  - (d) furnish to the Bank within the period for payment permitted by applicable law, a certified copy of an official receipt of the relevant taxation or other authorities involved for all amounts deducted or withheld as aforesaid.

## **ARTICLE VIII**

### **AFFIRMATIVE AND NEGATIVE COVENANTS**

#### **SECTION 8.1 AFFIRMATIVE COVENANTS**

The Issuer hereby covenants and undertakes with the Bank from the date of this Debenture and for so long as the Banking Facilities remain available or so long as any money remains payable under this Debenture, the Issuer shall:-

- 8.1.1 conduct and carry out its business and affairs with due diligence and efficiency and in accordance with sound financial and industrial standards and practices and in accordance with its Constitution or Memorandum and Articles of Association;
- 8.1.2 furnish to the Bank all such information as the Bank shall reasonably request concerning any factors materially affecting the Issuer's business and the operations and financial condition of the Issuer and the Charged Assets or any part thereof;
- 8.1.3 keep full and particular accounts of the carrying on of its business or businesses and cause the same to be properly posted up to date and prepare or cause to be prepared all accounts in such manner that Section 3.1.8 would be complied with;

- 8.1.4 deliver to the Bank such number of copies as the Bank may reasonably request of the following:-
- (a) within thirty (30) days from the end of each half year of each financial year of the Issuer complete but unaudited financial statements of the Issuer duly certified by an officer of the Issuer in such form and substance as the Bank may from time to time determine;
  - (b) within ninety (90) days or within any extended period acceptable to the Bank after the end of each financial year of the Issuer its balance sheet, profit and loss accounts and reports duly audited and certified by a qualified independent auditor acceptable to the Bank stating accurately, in accordance with generally accepted accounting standards, the financial condition of the Issuer;
- 8.1.5 maintain or cause to be maintained records adequate to record and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Issuer and allow the Bank or its agents and servants to inspect all records at any office branch or place of business of the Issuer or elsewhere and all records kept by any other authorities or persons so far as such records relate to or affect the Charged Assets or any part thereof and the Issuer shall give to the Bank or any person authorized by the Bank to inspect such records such written authorities as may be required to enable the Bank to inspect the said records;
- 8.1.6 permit or cause to permit the Bank or its agents and servants at all times to inspect the Issuer's offices factories or other premises the said lands the sites works and construction works of the Issuer the operation thereof and any relevant records and documents and for that purpose to enter upon the land or premises upon which the same may be and to make inventories and records thereof and if the Bank shall reasonably desire to have the Charged Assets valued to permit the valuation thereof by a valuer appointed by the Bank and/or to have the adequacy of structural and other works thereon confirmed by the reports of such professional consultants as the Bank may appoint and the cost of any such valuation or report shall be borne by the Issuer. Any such entry and inspection shall be arranged in advance with the Issuer and the Bank shall not unreasonably interfere with the operations of the Issuer;
- 8.1.7 punctually pay or cause to pay all rents rates taxes and all outgoings payable in respect of the premises at which it carries on business and obtain all necessary licences and comply with all regulations relating to the carrying on of its business on such premises and the Issuer shall produce or cause to produce to the Bank the receipts for all such payments as aforesaid. In default whereof, it shall be lawful for but not obligatory upon the Bank to pay the same or any part thereof;
- 8.1.8 get in and realise all book and other debts and claims (hereby charged) in the ordinary course of its business and pay into the Issuer's or the Borrower's account with the Bank or to such account as the Bank may from time to time direct all monies which it may receive in respect of the same forthwith on receipt and pending such payment hold such monies on trust for the Bank and not (without the prior consent in writing of the Bank) charge or otherwise dispose of or release exchange compound set off or grant time or indulgence or otherwise deal with all or any of the same or purport so to do;
- 8.1.9 appoint from time to time such auditor or firm of auditors acceptable to the Bank and authorize such auditor or firm of auditors to supply the Bank with a

certified copy of any communication sent by such auditor or firm of auditors to the Issuer and further to communicate directly with the Bank at any time in respect of any matter connected with the accounts and operations of the Issuer;

- 8.1.10 maintain in full force and effect all authorizations, licences, approvals and consents referred to in Sections 3.1.5 and 5.1.3;
- 8.1.11 notify the Bank of the occurrence of any Event of Default or of any event of default in relation to any other indebtedness of the Borrower and/or Issuer or of any other occurrence of which it becomes aware which in its reasonable opinion might adversely affect its ability to fully comply with its obligations hereunder;
- 8.1.12 notify the Bank if any of the Issuer's authorized signatories be no longer authorized to act on the Issuer's behalf hereunder;
- 8.1.13 observe and comply at all times with all relevant laws and regulations which may be applicable from time to time and all the conditions contained in or pertaining to any licence issued to the Issuer;
- 8.1.14 furnish to the Bank all such information as the Bank shall reasonably request concerning the financial condition of the Issuer in such form as the Bank may require from time to time and in particular supply the Bank with statements of all monies owing to the Issuer in such form as the Bank may from time to time require;
- 8.1.15 pay for any sales and services tax or any other taxes or levies which as at the date of this Debenture or at any date subsequent to the date of this Debenture, is imposed, levied or is required by law to be paid to anybody or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank, during the continuation of the Banking Facilities so long as the Banking Facilities or any part of it remains outstanding and unpaid; and
- 8.1.16 bear and pay for any goods and services tax or other taxes or levies incurred by the Bank in relation to the Banking Facilities and any other goods or services provided under the Banking Facilities and in the event that the Bank shall effect payment on the Borrower and/or the Issuer's behalf, the Borrower and/or the Issuer shall reimburse the Bank for such amounts paid.

## **SECTION 8.2      NEGATIVE COVENANTS**

The Issuer hereby further covenants and undertakes that so long as any money remains payable under this Debenture or so long as the Banking Facilities remain available to the Borrower or any of the Indebtedness remains unpaid and/or payable by the Borrower, the Issuer will not without the prior written consent of the Bank:-

- 8.2.1 create or permit to exist any mortgage charge pledge lien or other encumbrance on any of the Charged Assets or any part thereof or any interest therein except this Debenture;
- 8.2.2 enter into any transaction with any person firm or company except in the ordinary course of business, on ordinary commercial terms and on the basis of arm's length arrangements or establish any exclusive purchasing or sales agency or enter into any transaction whereby the Issuer might pay more than the ordinary commercial price for any purchase or might receive less than the

- full ex-works commercial price (subject to normal trade discounts) for its products;
- 8.2.3 sell or dispose of any fixed assets or investment;
- 8.2.4 enter into any partnership profit-sharing or royalty agreement or other similar arrangement whereby the Issuer's income or profit are or might be shared with any other person firm or company or enter into any management contract or similar arrangement whereby the Issuer's business or operations are managed by any other person firm or company other than a company deemed to be related to the Issuer under Section 7 of the Companies Act;
- 8.2.5 add to delete vary or amend its Constitution or Memorandum and Articles of Association in any manner which would be inconsistent with the provisions of this Debenture or change its financial year or the nature of its business or sell transfer lease or otherwise dispose of all or a substantial part of its capital assets or undertake or permit any merger consolidation or reorganization;
- 8.2.6 increase decrease or in any way whatsoever alter its authorized or issued capital whether by varying the amount structure or value thereof or the rights attached thereto;
- 8.2.7 declare pay or make any dividend or bonus issue or other distribution whether of an income or capital nature and whether in cash or in specie;
- 8.2.8 permit any change in the nature or scope of the Issuer's business or save as otherwise disclosed to the Bank prior to the date hereof in the structure of its ownership or shareholdings;
- 8.2.9 guarantee any person enterprise or company;
- 8.2.10 lend or advance or give any credit (other than normal trade credit or trade guarantees or temporary loans or advances to staff customers contractors or suppliers in the ordinary course of business) to any person partnership or corporation;
- 8.2.11 invest or acquire shares or debentures in or with or lend money to any company or person save and except in its ordinary course of business;
- 8.2.12 make any repayment or prepayment of any existing or future loan advanced or to be advanced to the Borrower by any corporation deemed to be related to the Borrower under Section 7 of the Companies Act and/or the Issuer's shareholders and/or its directors.

## **ARTICLE IX**

### **COVENANTS IN RESPECT OF THE CHARGED ASSETS**

#### **SECTION 9.1 COVENANTS IN RESPECT OF THE CHARGED ASSETS**

In addition to and not in derogation of any of the provisions herein contained, the Issuer further covenants with the Bank that it shall during the continuance of this Debenture:-

- 9.1.1 procure and maintain all approvals, permits and licences required for the utilisation of and the manufacturing of the products from the Charged Assets and will observe and comply at all times with all relevant laws and regulations



which may be applicable from time to time and all the conditions contained in or pertaining to any such licences issued to the Issuer;

- 9.1.2 punctually pay all taxes and other outgoings payable in connection with or arising out of the Charged Assets and the Issuer shall produce to the Bank the receipts for all such payments as aforesaid. In default whereof, it shall be lawful for but not obligatory upon the Bank to pay the same or any part thereof;
- 9.1.3 at its own costs, keep and maintain the Charged Assets in good and substantial repair and condition and in working order and free of all defects deficiencies and malfunction and shall permit the Bank, its agents and workmen at all reasonable times of the day to enter into any land or building on or in which the Charged Assets is located and/or affixed to view and inspect its condition of repair. In default whereof it shall be lawful for but not obligatory upon the Bank its agent and workmen at any time to enter upon such land or premises to effect such repairs as may be necessary and all monies expended by the Bank are to be for and on the account of the Issuer and the Borrower PROVIDED HOWEVER that if the Bank enters and effects such repairs it shall not be liable as a chargee in possession nor shall it be answerable for any involuntary loss happening in or about the exercise or execution of any power conferred on the Bank under this Debenture or by law;
- 9.1.4 keep each of the movable Charged Assets at all times in the possession and control of the Issuer at the location(s) notified to the Bank prior to the date hereof. The Issuer shall not move any of the movable Charged Assets from such location(s) without the prior written consent of the Bank;
- 9.1.5 where by the specifications or recommendations of the manufacturer of any movable Charged Assets, that movable Charged Assets is required to be installed or set up in any manner for use or operation, the Issuer shall before using or operating that movable Charged Assets install or set up that movable Charged Assets in accordance with such specifications or recommendations;
- 9.1.6 conduct and carry out daily and/or routine maintenance and service of each of the movable Charged Assets in accordance with the recommendations conditions and specifications made or prescribed by the manufacturer thereof, and the Issuer shall not keep maintain service use and/or operate any movable Charged Assets otherwise than in accordance with the recommendations conditions and specifications made or prescribed by the manufacturer thereof for that movable Charged Assets. In default whereof it shall be lawful for but not obligatory upon the Bank its agent and workmen at any time to enter upon such land or premises to effect such maintenance and services as may be necessary and all monies expended by the Bank are to be for and on the account of the Issuer and the Borrower. The Issuer represents and warrants to the Bank that the Issuer has and will continue to have throughout the subsistence of this Debenture knowledge of all the recommendations conditions and specifications made or prescribed by the manufacturer of the movable Charged Assets for the installation storage maintenance service use and operation of the movable Charged Assets;
- 9.1.7 keep the Charged Assets free from distress execution or any other legal process;
- 9.1.8 assume all responsibility liability and risks for each of the Charged Assets and the custody and use thereof and for all injuries to or deaths of persons and damage to property howsoever caused by or arising from any of the Charged Assets or the possession, custody or use thereof whether any such injury or

death be of any agent or employee of the Issuer or of any third party and such damage be to any property of the Issuer or any third party;

- 9.1.9 not copy or use in any way any patents designs copyrights and all other intellectual properties rights relating to or in connection with or otherwise pertaining to the Charged Assets or any part thereof without obtaining the prior written consent of the Bank;
- 9.1.10 not, in any event, use the Charged Assets or any part thereof for the purpose of drawing, designing, developing or producing any nuclear or other lethal weapon which may in any way pose as a threat or danger to the nations or contravene any law or regulation;
- 9.1.11 promptly notify the Bank in writing of any defect malfunction or breakdown occurring in any of the Charged Assets;
- 9.1.12 not without the prior written consent of the Bank make any alterations additions or improvements to any of the Charged Assets or any changes of the working order or function thereof. All additions replacements or improvements made to any of the Charged Assets with the consent of the Bank shall be deemed to form part of that Charged Asset and be charged to the Bank hereunder and be subject to the terms and conditions of this Debenture Provided always that if any such alterations or changes shall have been made without the Bank's consent, the Issuer shall immediately upon being required to do so by the Bank remove such alterations or changes and restore that Charged Asset to the same quality function and condition as before at the expense of the Issuer and the Borrower;
- 9.1.13 not do or omit to do or suffer to be done or omitted any act matter or thing in or in respect of the Charged Assets or any part thereof which shall contravene the provisions of any Act ordinance order rule regulation or law now or hereafter affecting the same and will at all times hereafter indemnify and keep indemnified the Bank against all claims demands actions proceedings costs and expenses in respect of any such act matter or thing done or omitted to be done in contravention of the said provisions;
- 9.1.14 inform the Bank of any application, demand, notice, order or any other whatsoever notice document or transactions in any way affecting concerning or touching on the Charged Assets or any part thereof forthwith upon the issue publication service or occurrence thereof (time being of the essence in respect hereof) and produce the same to the Bank if called upon to do so AND the Issuer shall do all acts and take all steps necessary or expedient to safeguard and preserve the Charged Assets or any part thereof or the title of ownership thereto AND the Issuer agrees that the Bank may at its discretion and on behalf or in the name and at the expense of the Issuer do all such acts and employ all such persons as the Bank may deem fit for the purposes of safeguarding and preserving the Charged Assets as aforesaid;
- 9.1.15 not use the Charged Assets or any part thereof or suffer the same to be used for purposes other than those for which the same has been intended or manufactured nor do or permit or suffer to be done anything by reason whereof any policy or policies of insurance referred to in Section 10.1 herein may be rendered void or voidable. Upon receipt of notice in writing from the Bank that in the opinion of the Bank any user by the Issuer of the Charged Assets or any part thereof for any reason whatsoever is calculated to affect adversely the security of the Bank, the Borrower shall forthwith discontinue such use;

- 9.1.16 not lease or let out or grant or agree to lease let out or grant any licence or otherwise howsoever part with the possession or make or accept the surrender of any lease whatsoever of or in respect of the Charged Assets or any part thereof to any person firm or company without the consent in writing of the Bank first had and obtained which consent may be given either unconditionally or on such terms and conditions as the Bank shall deem fit and the decision of the Bank shall be final and conclusive; and
- 9.1.17 do or permit to be done each and every act or thing which the Bank may from time to time reasonably require to be done for the purpose of enforcing the Bank's rights under this Debenture and will allow its name to be used as and when required by the Bank for that purpose;
- 9.1.18 if any of the Charged Assets comprised of immovable properties:-
- (a) let the Bank have the custody or possession of the issue documents of title to any or all of the said lands at any time if and when required by the Bank and the parties hereby agree that insofar as the law shall permit the application of Section 244(2) of the National Land Code, 1965 shall be restricted to instances where the production of any document in the custody or possession of the Bank is required for purposes of any action or matter initiated or instituted by government or any governmental authority department or officer and not where such document is required for any purpose or to effect any transaction conducted or initiated by the Issuer AND nothing contained or expressed in the said Section 244(2) shall be construed as or deemed to be consent by the Bank (whether express or implied) to any act or transaction requiring the consent of the Bank;
  - (b) punctually pay all quit rents rates assessments taxes and all outgoings payable in connection with or arising out of the said lands and the Issuer shall produce to the Bank the receipts for all such payments as aforesaid. In default, it shall be lawful for but not obligatory upon the Bank to pay the same or any part thereof;
  - (c) keep the building now standing or that may hereafter be erected on the said lands and all fitting and fixture therein in good and substantial repair and condition. In default, it shall be lawful for but not obligatory upon the Bank at any time to enter upon the said lands and to effect such repairs as may be necessary;
  - (d) observe and comply with any condition covenant restriction and category of land use express or implied binding on the said lands or any building erected or to be erected thereon hereafter or otherwise howsoever in respect of the said lands and shall not do or omit to do or suffer to be done or omitted any act matter or thing in or in respect of the said lands or any part thereof which shall contravene the provisions of any Act ordinance order rule regulation or law now or hereafter affecting the same and will at all times hereafter indemnify and keep indemnified the Bank against all claims demands actions proceeding costs and expenses in respect of any such act matter or thing done or omitted to be done in contravention of the said provisions;
  - (e) give to the Bank within seven (7) days of the receipt of the notice of the same full particulars of any notice or proposal for a notice order or proposal for an order given or issued or made to the Issuer in respect of the said lands of any part thereof by or on behalf of any planning local

government public health sanitary housing or other authority and if so required by the Bank produce such notice to the Bank and also shall without delay and within the period prescribed by such notice take all reasonable and necessary steps to comply with the provisions of such notice or order and also may on the Issuer's own accord or shall at the request of the Bank and at the Issuer's cost make or join with the Bank in making such objections or representations against or for in respect of any such proposal or such notice or order as the Bank shall deem expedient and the Bank may if it thinks fit and on behalf or in the name and at the expense of the Issuer do all such acts and employ all such person as the Bank shall deem fit for the purpose of safeguarding and preserving the said lands and every and any part thereof;

- (f) not use any building on the said lands or suffer the same to be used for purposes other than those for which the same has been built nor to store or bring on the said lands any article of a specially combustible inflammable or dangerous nature nor to do or permit or suffer to be done anything by reason whereof any policy or policies of insurance referred to in Section 10.1 herein may be rendered void or voidable;
- (g) not make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the said lands or for rescission removal or amendment of any condition or restriction affecting the said lands without the written consent of the Bank first had and obtained;
- (h) not pull down or remove any building or fixture now or at any time hereafter erected or affixed to the said lands or any part thereof or make any alteration without the consent in writing of the Bank first had and obtained and shall forthwith replace and make good the same in the event of such alteration pulling down or removal. In default whereof it shall be lawful for but not obligatory upon the Bank to replace and make good the same at the cost and expense of the Issuer;
- (i) keep the said lands clean weeded and free from lallang and other undergrowths. In default whereof, it shall be lawful for but not obligatory upon the Bank to employ workmen at the cost and expense of the Issuer to do the same; and
- (j) where applicable, maintain and cultivate the said lands in a proper and workmanlike manner and after the method of good husbandry;

PROVIDED ALWAYS that nothing in this Article contained and no act of the Bank or its agents and such persons done in pursuance of the provisions of this Article shall render the Bank liable as chargee in possession.

## ARTICLE X

### INSURANCE

#### SECTION 10.1 INSURANCE AND ENDORSEMENT OF THE BANK'S INTEREST

The Issuer shall keep all the Charged Assets insured by the Issuer at its expense up to their full insurable value and in any event for a sum satisfactory to the Bank and shall take out such insurance policy or policies in the name of the Issuer and with the Bank's interest as chargee and loss payee endorsed in such policy or policies:-

10.1.1 against loss or damage by fire explosion lightning tempest flood riot civil commotion strike and malicious act; and

10.1.2 against any other risks as the Bank may from time to time decide;

and keep the same so insured throughout the duration of this Debenture to their full insurable value and in any event for a sum acceptable to the Bank with an insurance company to be approved by the Bank and shall deposit with the Bank the original of the policy or policies so taken out. In default whereof, it shall be lawful for but not obligatory upon the Bank to insure the same and all monies expended by the Bank with interest thereon at the rate specified in the Facilities Agreement or such rate as may be prescribed by the Bank commencing from the date of such payment shall be recoverable from the Issuer and the Borrower and shall be repaid on demand being made by the Bank. Notwithstanding anything contained herein (and whether or not the Issuer shall be in default as aforesaid) it is agreed that if the Bank shall in its absolute discretion consider it desirable or expedient the Bank shall be at liberty and is hereby expressly authorized by the Issuer to effect maintain or renew any such insurance as aforesaid as the Bank may think fit at the cost and expense of and for the Issuer and the Borrower. The Issuer and the Borrower hereby agrees that the Issuer and the Borrower shall not hold the Bank liable for any negligence whatsoever as a result of any action taken or omission to effect take out maintain renew or increase any such insurance or otherwise and the Bank shall be entitled to retain for its own use and benefit any commission paid or allowed to it as agents to such insurers.

## **SECTION 10.2 RESTRICTION AGAINST ADDITIONAL INSURANCE**

The Issuer shall not except at the request or with the consent in writing of the Bank effect or keep on foot any insurance against any risk in respect of the Charged Assets where the Issuer or the Bank has effected or has kept on foot such insurance as aforesaid.

## **SECTION 10.3 PAYMENT OF PREMIUM**

Issuer shall duly and punctually pay or cause to be paid the premium for all insurances taken out and maintained or caused by the Issuer or the Bank to be taken out and maintained as aforesaid.

## **SECTION 10.4 INSURANCE POLICIES AND PREMIUM RECEIPTS**

The Issuer shall permit all insurance policies and the receipts or other evidence of payment of premium or any premium paid by the Issuer to remain in the custody of the Bank and will when required deliver or produce to the Bank or such person as the Bank may direct any policy of insurance effected by the Issuer and the receipt or other evidence of payment of the current premium in respect thereof.

## **SECTION 10.5 APPLICATION OF INSURANCE MONEYS**

The Bank may at its discretion require any money received on any insurance of the Charged Assets whether effected by the Issuer or the Bank to be applied in or towards making good the loss or damage in respect of which the money is received or receivable or at the option of the Bank in or towards the discharge of any money or liability secured by this Debenture and the Issuer shall hold all monies if paid to and received by it on trust for the Bank and the Bank may receive and give a good discharge for such monies.

**SECTION 10.6 WORKMEN'S COMPENSATION INSURANCE**

The Issuer shall take out and maintain for such amount and with such insurance company as shall be approved by the Bank a policy of insurance in respect of Workmen's Compensation for all employees of the Issuer or alternatively comply with any law for the time being relating to the establishment of social security schemes or benefits for employees.

**ARTICLE XI****REMEDIES****SECTION 11.1 RIGHT TO APPOINT OBSERVER**

The Bank shall have the right to appoint an observer on the Board of directors of the Issuer during the continuance of this Debenture. The observer appointed hereunder shall have the right to receive notices of and attend all meetings of directors and receive all minutes thereof and to inspect the books of account of the Borrower on behalf of the Bank.

**SECTION 11.2 EVENTS OF DEFAULT**

- 11.2.1 The Bank may at its absolute discretion and at any time suspend or cancel its Commitment and demand for the immediate repayment of the Banking Facilities.
- 11.2.2 In addition and without prejudice to Section 11.2.1, if:-
- (a) the Issuer and/or the Borrower fails to pay on the due date any money or to discharge any obligation or liability payable by it from time to time due to the Bank or fails to comply with any term or condition of any banking facility from the Bank; or
  - (b) the Issuer makes default under any other provision of this Debenture or other security documents to which it is a party, which is not capable of remedy or which, being capable of remedy, is not remedied within seven (7) days after notice to the Issuer from the Bank requesting action to remedy the same; or
  - (c) any indebtedness of the Borrower or any of its subsidiaries or the Issuer becomes capable, in accordance with the relevant terms thereof, of being declared due prematurely by reason of a default by the Borrower or its subsidiaries or the Issuer in its or their respective obligations in respect of the same or the Borrower or its subsidiaries or the Issuer fail(s) to make any payment in respect thereof on the due date for such payment or if due on demand when demanded or the security for any such indebtedness become enforceable; or
  - (d) any representations or warranty made or implied pursuant to Article III or Article V or any other provision of this Debenture or pursuant to any notice opinion or certificate or other document delivered pursuant to the terms of this Debenture proves to have been incorrect or misleading as of the date at which it is made or deemed made; or
  - (e) any licences authorization approval consent order or exemption referred to in Section 3.1.5 or 5.1.3 or 9.1.1 is revoked or withheld or materially

modified or is otherwise not granted or fails to remain in full force and effect; or

- (f) the Borrower or any of its subsidiaries or the Issuer enters into or proposes to enter into or there is declared by any competent court or authority a moratorium on the payment of indebtedness or other suspension of payment generally; or
- (g) any part of the security hereby created or any guarantee indemnity or other security for the Banking Facilities fails or ceases in any respect to have full force and effect or to be continuing or is terminated or disputed or jeopardized or invalidated or is unenforceable; or
- (h) any step is taken for the winding up dissolution or liquidation of the Borrower or any of its subsidiaries or the Issuer; or
- (i) a distress execution attachment or other legal process is levied enforced or taken out against the Charged Assets or the property and assets of the Borrower or any of its subsidiaries or the Issuer and is not discharged or stayed within seven (7) days; or
- (j) any encumbrance over any of the Charged Assets or any property and assets of the Borrower or any of its subsidiaries or Issuer becomes enforceable; or
- (k) the Borrower or any of its subsidiaries or the Issuer becomes or is declared insolvent or is unable or admits in writing its inability to pay its debts as they fall due or become insolvent within the terms of any applicable law; or
- (l) a liquidator trustee administrator receiver manager or similar officer is appointed in respect of the Borrower or any of its subsidiaries or the Issuer or in respect of all or any part of the Charged Assets or the Borrower's or any of its subsidiaries' respective property and assets; or
- (m) an order is made or an effective resolution is passed for the winding up of the Issuer; or
- (n) the Borrower or the Issuer commits or threatens to commit a breach of any covenant or stipulation herein contained; or
- (o) in the opinion of the Bank (which shall be final and binding) the Borrower or the Issuer is not carrying on its business and affairs in accordance with the sound financial and industrial standards and practices; or
- (p) a notice or proposal for compulsory acquisition of any of the said lands shall be issued or made by any government or governmental authority or statutory authority or if such authorities shall condemn nationalize seize or otherwise expropriate all or any part of the Charged Assets or shall have assumed custody or control of such Charged Assets; or
- (q) the Bank decides in its sole and absolute discretion that the continuation of the Banking Facilities would be likely to be detrimental to its own position or otherwise undesirable which in the opinion of the Bank shall be final and binding on the Borrower and the Issuer; or

- (r) by reason of any change after the date of this Debenture in any applicable law regulation or regulatory requirement or in the interpretation thereof by any governmental or other authority charged with the administration thereof it shall become unlawful for the Bank to comply with its obligations hereunder or to continue to make available the Banking Facilities to the Borrower; or
- (s) any other event or series of events whether related or not (including, without limitation, any material adverse change in the business assets or financial condition of the Borrower or any of its subsidiaries or the Issuer) has or have occurred which in the opinion of the Bank (which opinion shall be final and binding on the Borrower and the Issuer) could or might affect the ability or willingness of the Borrower and/or the Issuer to comply with all or any of its obligations hereunder; or
- (t) any of the foregoing events or analogous events or proceedings occurs in relation to any Security Party;

then, in any such event, the Bank may by written notice to the Borrower (without any legal obligation so to do) declare that the Banking Facilities shall be cancelled whereupon the Bank's Commitment shall cease.

11.2.3 Upon demand for the immediate repayment of the Banking Facilities pursuant to Section 11.2.1 or upon declaration by the Bank of cancellation of the Banking Facilities pursuant to Section 11.2.2:

- (a) the total aggregate principal amount outstanding under the Banking Facilities together with interest and all other sums payable under this Debenture shall become immediately due and shall be forthwith repaid by the Borrower and the Issuer; and
- (b) the Borrower and the Issuer shall provide cash cover on demand for all contingent liabilities of the Borrower to the Bank and for all notes or bills accepted endorsed or discounted and all bonds guarantees indemnities documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Borrower.

### **SECTION 11.3 REMEDIES OF THE BANK**

At any time after the monies hereby secured shall have become immediately repayable under any of the provisions of Section 11.2:-

- 11.3.1 the Bank or any person authorized by the Bank may enter into and upon any land or premises where the Charged Assets or any of them are located and/or affixed without any notice and may take possession and control of all such Charged Assets and all books of account and documents relating to such Charged Assets as are hereby charged;
- 11.3.2 the Bank may at its discretion be at liberty to give any notice which may be deemed necessary by the Bank to any person or persons owing monies to the Issuer that all such monies be paid to the Bank alone and the Issuer agree pursuant to Section 11.5 hereto to irrevocable appoints the Bank to be its attorney to demand sue for and recover and take all appropriate legal proceedings to recover such monies and to give a good receipt for the same and to give such notices to the debtors of the Issuer and take all necessary steps to complete the assignment of such monies to the Bank as may be necessary.



- 11.3.3 the Bank may appoint any competent person or persons not precluded under the provisions of Section 373 of the Companies Act to be Receiver and Manager of the Charged Assets and may in like manner from time to time remove any Receiver and Manager so appointed and appoint another or others in his or their stead;
- 11.3.4 the Bank may effect the sale of any of the Charged Assets of which it had taken possession under Section 11.3.1 at any time upon giving not less than twenty four (24) hours' notice of the intended sale to the Issuer, whether by public auction, private contract or otherwise (with or without advertisement), at such price, in such manner and upon such terms and conditions as the Bank shall think proper with liberty to buy and resell the same and the Bank shall not be liable for any loss caused to the Issuer thereby other than caused by the Bank's wilful default and the Issuer shall do all things necessary to enable the Bank to complete the sale by the Bank of any of the Charged Assets; and/or
- 11.3.5 without being required to give further notice to the Issuer, the Bank may institute such proceedings and take such steps (including any proceedings hereunder or for the realization of its security under this Debenture and any of the other security documents) as it may think fit to enforce payment of the amounts charged hereunder or thereunder.
- 11.3.6 the Bank may, at any time and from time to time, delegate by power of attorney or in any other manner to any person or persons or fluctuating body of persons which the Bank determines to be competent all or any of the powers, authorities and discretion which are for the time being exercisable by the Bank under this Debenture and any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to such regulations as the Bank may reasonably think fit and the Bank shall not be in any way liable or responsible to the Issuer for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

#### **SECTION 11.4 POWERS OF RECEIVER AND MANAGER**

A Receiver and Manager appointed pursuant to Section 11.3 shall have power:-

- 11.4.1 to enter into any land or premises on or in which the Charged Assets is located and/or affixed and take possession or collect and get in all or any of the Charged Assets and for that purpose to take any proceedings in the name of the Issuer or otherwise as they may deem expedient;
- 11.4.2 to manage or carry on or concur in carrying on dispose of reconstruct expand or merge the business of the Issuer or any part thereof.
- 11.4.3 To raise and borrow money on the security of any or all of the Charged Assets upon such terms as he or they shall think fit;
- 11.4.4 to sell (whether by public auction or private contract or otherwise with or without advertisement) or concur in selling any of the Charged Assets or lease or let or sub-let or hire or licence or vary or accept the surrender of any lease or sublease or tenancy or hiring or licensing or otherwise deal therewith and on such terms in the interest of the Bank as he or they shall think fit and for such purposes to execute such assurances transfers leases charges surrenders and any other documents in the name and on behalf of the Issuer or otherwise as he or they may consider necessary or desirable and to give valid receipts for all monies received from the realization of the Charged Assets. In exercising the

power of sale hereby conferred the Receiver and Manager may sell at such time and in such manner and for such consideration (including a consideration consisting wholly or partly of shares or securities of any other company) as he or they may in his or their absolute discretion think fit and in exercising such discretion he or they may have regard to the views and desires of the Bank. The Receiver and Manager shall not be accountable for any loss or damage which may be suffered by the Issuer by reason of the exercise of such discretion other than caused by the Receiver's and/or Manager's or Receivers' and/or Managers' wilful default;

- 11.4.5 to carry on manage or concur in carrying on and managing the business of the Issuer which is relating to or in connection with or otherwise pertaining to the Charged Assets or any part thereof or the utilisation thereof;
- 11.4.6 to make any arrangement or compromise which he or they may think expedient in the interest of the Bank to bring take defend or discontinue any actions suits or proceedings whatsoever civil or criminal in relation to the Charged Assets;
- 11.4.7 to appoint managers accountants solicitors agents officers servants and workmen for any of the purposes herein contained at such salaries and remuneration and for such periods as he or they may determine and to dismiss them or any one of them;
- 11.4.8 to make calls conditionally or unconditionally on the members of the Issuer in respect of its uncalled capital with such and the same powers for that purpose of enforcing payment of any calls so made as are by the Articles or Association of the Issuer conferred upon the directors of the Issuer in respect of calls authorised to be made by them and in the names of the directors or in that of the Issuer or otherwise and to the exclusion of the directors' power in that behalf.
- 11.4.9 to make and effect such repairs renewals and improvements to the Charged Assets or any part thereof as he or they may think fit and maintain renew take out or increase insurances on such terms as he or they may deem appropriate;.
- 11.4.10 to give valid receipts, releases and other proper and sufficient discharge and acquiescence for all monies received and execute all assurance which may be proper or desirable for realizing the Charged Assets or any part thereof;
- 11.4.11 to transfer all or any of the Charged Assets and/or for any of the liabilities of the Issuer to any other company or body corporate whether or not formed or acquired for the purpose;
- 11.4.12 generally to carry out or cause or authorize to be carried out any transaction, scheme or arrangement whatsoever whether similar or not in the foregoing in relation to the Charged Assets which he or they may consider expedient as effectually as if he or they were solely and absolutely entitled to the Charged Assets or any part thereof;
- 11.4.13 to repair and keep in repair the works machineries plant and other property of the Issuer comprised in the Charged Assets and for this purpose to apply in the name of the Issuer for any certificate license permission or consent required under any Act ordinance regulations or by laws made by any competent authority;
- 11.4.14 to sign any documents execute any deed and do all such other acts and things as may be considered by him to be incidental or conclusive to any of the

matters or powers aforesaid or to the realization of the security hereunder and use the name of the Issuer for all the above purposes;

- 11.4.15 to demand sue for and collect and receive and give good and effectual receipts and discharges for the proceeds of sale of the Charged Assets or any part thereof and for the rents and profits now due or henceforth to become due in respect of the Charged Assets or any part thereof and use all lawful proceedings and means by distress or action or otherwise for recovering and receiving the said rents and for enforcing the performance of any covenants or agreements which any lessee sub-lessee tenant hirer or licensee may be liable to perform and for evicting and ejecting or recovering damages from any lessee sub-lessee tenant hirer or licensee and for obtaining and retaining possession of the Charged Assets or any part thereof occupied by any lessee sub-lessee tenant hirer or licensee;
- 11.4.16 to delegate substitute and appoint from time to time one or more substitute or substitutes to act under him or them or in his or their place with the same or more limited powers as are hereby given as he or they shall think fit and from time to time at his or their sole discretion to remove and/or re-appoint any substitute or substitutes;
- 11.4.17 to pay such person or persons any or all of the disbursements stamp duties fees charges legal and other expenses relating to or connected with the matters things or purposes herein referred to;
- 11.4.18 to commence prosecute enforce defend answer or oppose all actions and other legal proceedings and demands touching any of the matters aforesaid and also if thought fit to compromise refer to arbitration abandon submit to judgement or become non-suited to any such action;
- 11.4.19 to pay all taxes charges insurance expenses and other outgoings and expenses whatsoever in respect of the Charged Assets required from time to time to be paid by the Issuer or chargeable upon the Issuer or on account of the Charged Assets or any part thereof; and/or
- 11.4.20 to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he or they lawfully may do as agent of the Issuer.

#### **SECTION 11.5 RECEIVER(S) AND MANAGER(S) AS AGENT OF THE ISSUER**

Any Receiver and Manager so appointed shall be deemed to be the agent or agents of the Issuer and the Issuer shall be solely responsible for his or their acts or defaults and for his or their remuneration and the Bank shall be under no liability to the Receiver and Manager for his/their remuneration costs charges or expenses or otherwise.

#### **SECTION 11.6 POWER OF ATTORNEY**

In consideration of the Bank agreeing at inter alia the request or desire of the Issuer, to grant or continue to make available to the Borrower the Banking Facilities, the Issuer shall execute an irrevocable Power of Attorney in such form and substance as prescribed by the Bank appointing the Bank and any and every Receiver and Manager appointed as aforesaid and his or their substitute or substitutes the attorney or attorneys of the Issuer jointly and severally.

## **SECTION 11.7 INVOLUNTARY LOSS AND CHARGE IN POSSESSION**

Neither the Bank nor any Receiver and Manager appointed pursuant to this Debenture shall be liable or answerable:-

- 11.7.1 for any involuntary loss happening in or about or in connection with or arising from the exercise or execution of the rights, powers and trusts which may be under the provisions of this Debenture or by law or in equity be vested in the Bank or any Receiver and Manager; and
- 11.7.2 by reason of any entry into possession of any of the Charged Assets or any part thereof to account as chargee in possession or for anything except willful default for which a chargee in possession might be liable.

## **SECTION 11.8 ENQUIRY BY THIRD PARTIES**

No person dealing with any Receiver and Manager appointed by the Bank or with his or their attorneys or agents shall be concerned to enquire whether the security hereby constituted has become enforceable or whether the power exercised or purported to be exercised has become exercisable or whether any money remain due upon the security of this instrument or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made or otherwise as to the propriety or regularity of any sale calling in collection or conversion or to see to the application of any money paid to any Receiver and Manager or his or their attorney or agents and in the absence of fraud on the part of such person such dealing shall be deemed so far as regards the safety and protection of such person to be within the powers hereby conferred and to be valid and effectual accordingly and the remedy of the Issuer in respect of any irregularity or impropriety whatsoever in the exercise of such power shall be damages only.

## **SECTION 11.9 DISCHARGE OF PURCHASERS**

Upon any sale calling in collection or conversion of any of the Charged Assets and upon any other dealing or transaction under the provisions herein contained the receipt of any Receiver and Manager for the purchase money of the Charged Assets sold and for other monies paid to it, him or them shall effectually discharge the purchaser or person paying the same therefrom and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

## **SECTION 11.10 SEVERANCE OF PLANT EQUIPMENT AND MACHINERY**

In the exercise of the powers conferred by this Debenture the Bank or any Receiver and Manager appointed by the Bank may sever and sell plant equipment and machinery and other fixture (including trade fixture) hereby charged (hereinafter referred to as "the Charged Equipment") separately from the lands or premises to which they may be annexed.

## **SECTION 11.11 ISSUER NOT TO AFFIX PLANT EQUIPMENT AND MACHINERY TO LAND**

- 11.11.1 The Issuer undertakes not to attach affix or secure the Charged Equipment to any land or premises unless their use so requires and unless with the Bank's prior consent in writing and the Issuer shall in any event ensure to the extent consistent with sound engineering principles and technical practicality that in so far as the Charged Equipment is affixed to any land or premises the Charged Equipment shall be capable of being removed without material injury to such land or premises and that all such steps shall be taken as are necessary to prevent title to the Charged Equipment from passing to the owner of such land

or premises and to prevent any chargee of such land or premises from acquiring any interest over the Charged Equipment.

11.11.2 Without limiting the generality of Section 11.11.1 it is agreed between the Issuer and the Bank that:-

- (a) if the Charged Equipment shall be affixed attached or secured to any land or premises of which the Issuer is the owner or has an estate or interest the Charged Equipment shall as between the Bank and the Issuer be deemed not to be fixture and may be removed by the Bank or the Receiver and Manager, as the case may be, in accordance with the provisions of Section 11.3.1 or 11.4.1 herein, for which purpose the Bank or the Receiver and Manager, as the case may be, shall be entitled to enter upon such land or premises at any time for such purpose and the Bank or the Receiver and Manager, as the case may be, shall not be liable in respect of loss damage or otherwise arising in respect of such entry or removal;
- (b) if such land or premises is or becomes the subject of a charge or lien the Issuer without any request required from the Bank will obtain the written acknowledgment of the chargee or lien-holder that the Charged Equipment do not form part of the fixture to the land or premises the subject of such charge and that the chargee or lien-holder will not make any claim in relation thereto and will permit the Bank or the Receiver and Manager, as the case may be, whether or not there has been any default under the charge or whether or not the lien has become enforceable, to enter upon such land or premises and to remove the Charged Equipment therefrom.
- (c) if the Charged Equipment shall be affixed or secured to any land or premises of which the Issuer is not the owner, the Issuer shall prior to such affixing attaching or securing obtain the assent in writing of the owner thereof to the entry thereon and removal therefrom of the Charged Equipment in the manner referred to in Section 11.11.2(a) and as between the Bank and the Issuer, the Bank or the Receiver and Manager, as the case may be, shall have the same rights of entry and removal as in Section 11.11.2(a) herein.
- (d) the Issuer shall be solely responsible for any damage caused to any such land or premises by the affixing of the Charged Equipment thereto or the removal of the Charged Equipment therefrom (whether such affixing or removal be effected by the Bank or the Receiver and Manager, as the case may be, or the Issuer) and shall indemnify the Bank against any claim made in respect of such damage.

## **SECTION 11.12 PROCEEDS OF SALE**

All monies received by the Bank and/or such Receiver and Manager, as the case may be, shall subject to the claims of all secured or unsecured creditors (if any) ranking in priority to this Debenture be applied:-

First in payment of all costs charges and expenses and incidental to the exercise of the powers conferred to the Bank under this Debenture and including all remuneration and fees of such persons appointed by the Bank for the exercise of the powers aforesaid, all costs and expenses referred to Section 12.15 herein and all outgoings properly paid by the Bank or in payment of all costs charges and expenses of and incidental

to the appointment of the Receiver and Manager and the exercise by him or them of all or any of the powers aforesaid including all remuneration of the Receiver and Manager and all outgoings properly paid by him or them;

- Secondly in or towards payment to the Bank all interest due and payable under the Facilities Agreement;
- Thirdly in or towards payment to the Bank all interest remaining unpaid in respect of the Banking Facilities;
- Fourthly in or towards payment to the Bank of the principal amount of the Banking Facilities;
- Fifthly any surplus shall be paid to the Issuer and/or any other person or persons legally entitled thereto after discharging all the liabilities and monies due to the Bank;

PROVIDED FURTHER THAT if the Bank shall be of the opinion that the security may prove deficient payments may be made to the Bank on account of principal before interest but such alterations in the order of payment shall not prejudice the right of the Bank to receive the full amount to which the Bank would have been entitled if the primary order of payment have been observed or any lesser amount which the sum ultimately realized from the security may be sufficient to pay.

#### **SECTION 11.13 DEFICIENCY IN PROCEEDS**

If the amount recovered or realized under this Debenture pursuant to Sections 10.5 and/or 11.3 and/or 11.4 after deduction and payment from the amount so recovered or realised of all fees dues costs expenses taxes and other outgoings, is less than the amount due to the Bank and whether in the process of such recovery or realization the Bank has purchased any of the Charged Assets or otherwise, the Issuer and the Borrower shall pay to the Bank the difference between the amount due and the amount so recovered or realized and until payment will also pay interest on such balance at the rate specified in the Facilities Agreement or such rate as may be prescribed by the Bank with monthly rests as well after as before any demand or judgment and irrespective of whether or not the banker customer relationship has ceased or been terminated PROVIDED THAT nothing herein contained shall be construed as imposing any obligation (whether at law or in equity) upon the Bank to exhaust its remedy to sell the Charged Assets before commencing any separate action or before enforcing any other remedies or exercising any other rights against the Issuer, the Borrower or any other Security Party AND the Issuer and the Borrower hereby irrevocably and unconditionally agree and consent to the Bank commencing proceedings, enforcing other remedies, exercising any other rights which the Bank may have against the Issuer, the Borrower or Security Party simultaneously with and without having exhausted its right to sell or to proceed against the Charged Assets.

#### **SECTION 11.14 INDEMNITY**

In addition and without prejudice to the powers rights and remedies by these presents conferred, the Issuer shall indemnify the Bank out of the Charged Assets against any loss, claims, costs, expenses or other liabilities (including legal expenses on solicitor and client and full indemnity basis) which the Bank may sustain or incur:-

- 11.14.1 in or directly or indirectly as a result of the exercise or purported exercise of any of the powers, authorities or discretions vested in the Bank under this Debenture and against all actions, proceedings, losses, costs, claims and

demands suffered or incurred by the Bank in respect of any matter or thing done or omitted in any way relating to the Charged Assets; and

- 11.14.2 as a consequence of any default in payment by the Borrower and/or the Issuer of any sum due hereunder, including (but not limited to) any interest or fees paid or payable on account of or in respect of, any funds borrowed or deposits from third parties in order to maintain the amount in default or in liquidating or re-employing such funds or deposits

and the Bank may retain and pay all sums in respect of any of the same out of any monies received under the powers conferred by this Debenture. A certificate as to the amount of such loss, claim, cost, expense and liability by the Bank or signed by the Manager, Assistant Manager and any other duly authorized officer of the Bank shall, save for manifest error, be final, conclusive and binding on the Issuer and the Borrower for all purposes, including for purposes of legal proceedings.

#### **SECTION 11.15 DECRYSTALLISATION AND REFLOATATION**

- 11.15.1 Notwithstanding anything herein provided, at any time after the floating charge hereby created shall have crystallised over any or all of the floating Charged Assets (hereinafter referred to as the "Crystallised Fixed Charge") but before the appointment of any Receiver and Manager pursuant to Section 11.3.3 herein the Crystallised Fixed Charge shall upon the written consent of the Bank (such consent to be given at the absolute discretion of the Bank) cease to attach to the aforesaid floating Charged Assets and shall refloat as a floating charge.
- 11.15.2 Where the Receiver and Manager have been appointed pursuant to Section 11.3.3 herein, the parties hereto mutually agree that the Bank may in its absolute discretion direct the Receiver and Manager to hand back the management of the floating Charge Assets to the Issuer and thereafter the Crystallised Fixed Charged shall cease to attach to the aforesaid floating Charged Assets and shall refloat as a floating charge.
- 11.15.3 On refloatation of the Crystallised Fixed Charge in accordance with Section 11.15.1 or 11.15.2, as the case may be, the floating charge shall continue as if crystallization had not taken place.

### **ARTICLE XII**

#### **MISCELLANEOUS**

##### **SECTION 12.1 CONSOLIDATION**

It is hereby expressly agreed and declared that unless the Bank otherwise agrees the Borrower shall not be discharged except on payment by the Borrower and the Issuer of not only all monies secured hereby but also all monies which may be due or owing to the Bank (whether such liabilities be present future actual contingent primary collateral several or joint) under any loan and/or banking facility which may be granted from time to time by the Bank whether secured by any other charges or security documents created by the Issuer (or by any person through whom the Issuer claims in favour of or vested in the Bank) or otherwise.

**SECTION 12.2 PAYMENT IN GROSS**

All monies received from or on account of the Borrower or from any other person(s) or from the realization of this security or any security or otherwise for the purpose of being applied in the reduction of the account of the Borrower or of the monies covenanted to be paid under this Debenture shall be treated for all purposes as payments in gross and not as appropriated or attributable to any specific part or item of the said monies covenanted to be paid even if appropriated thereto by the Bank. All securities now or at any time hereafter held by the Bank shall be treated as securities for the said general balance. The Issuer or its successor-in-title shall have no claim to such securities or to any part thereof or any interest therein unless and until the Bank has received the full amount owing to the Bank by the Borrower.

**SECTION 12.3 LIENS AND OTHER SECURITIES NOT AFFECTED**

Nothing herein contained shall prejudice or affect the rights and remedies to which the Bank shall be entitled to against the Issuer or any other securities which the Bank may at any time or from time to time hold for or on account of the principal sums outstanding from time to time under the Banking Facilities or any money lent to or advanced for the benefit of the Borrower by the Bank, interest thereon and all other monies due and owing and remaining unpaid by the Borrower to the Bank nor shall anything herein prejudice or affect any bill note guarantee charge or other security which the Bank may for the time being have or hold for the principal sums outstanding from time to time under the Banking Facilities interest thereon and other monies aforesaid or any right or remedy of the Bank under such bill note guarantee charge or other security.

**SECTION 12.4 GOVERNMENT ACQUISITION**

In the event that any of the said lands or any part thereof shall at any time become the subject matter of or be included in any notice notification or declaration concerning or relating to acquisition by government or governmental authority or any enquiry or proceedings in respect thereof or if any government or governmental authority shall condemn nationalise seize or otherwise expropriate all or any part of the Charged Assets or shall have assumed custody or control of such Charged Assets, the Issuer shall forthwith inform the Bank of the same and shall forward to the Bank a copy or copies of such notice notification or declaration not more than three (3) days of receiving such notice notification or declaration. The Bank shall be entitled at the cost and expense of the Issuer to engage such advisor and agent (including solicitor and valuer) as it may think fit for the purpose of appearing or attending at or advising upon any enquiry or proceeding affecting concerning or relating to any such acquisition expropriation or any of the matters referred to in this section.

**SECTION 12.5 APPLICATION OF COMPENSATION MONIES**

Any money received as or by way of compensation in respect of any of the matters referred to in Section 12.4 herein shall be applied in or towards discharge or repayment of any money or liability secured by this Debenture and the Issuer shall hold all such monies so received on trust for the Bank and confirms that the Bank may receive and give a good discharge for such monies.

**SECTION 12.6 SUSPENSE ACCOUNT AND PROOF OF DEBT**

Any money received for the account of the Borrower or the Issuer or on the sale of any of the Charged Assets may be placed and kept to the credit of a non-interest bearing suspense account for so long as the Bank may in its absolute discretion deem fit without any obligation in the meantime to apply the same or any part thereof in or towards discharge of any money or liability due or incurred by the Borrower and/or the Issuer



under or arising from or in connection with the Banking Facilities. Notwithstanding any such payment in the event of any proceedings in or analogous to liquidation composition or arrangement of the Borrower and/or the Issuer, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of the amount outstanding against the Borrower and/or the Issuer on such general balance in the same manner as if this security had not been created and no monies or dividend so received by the Bank shall be treated as received in respect of this security but the full amount hereby secured shall be payable by the Issuer and the Borrower until the Bank shall have received from all sources one hundred Sen in the Ringgit Malaysia on the ultimate balance outstanding against the Borrower. After the Bank has received such ultimate balance in full, any claim on the part of the Issuer to any excess or any security remaining with the Bank shall be a matter of adjustment between the Bank and the Issuer and/or any other person or persons laying claim thereto.

### **SECTION 12.7 THE BANK MAY OPEN NEW ACCOUNTS**

It is hereby agreed that if the Issuer executes or creates in favour of any other corporation person or persons any further or subsequent charge mortgage or encumbrance over the Charged Assets hereby charged to the Bank of which the Bank shall receive notice, either actual or constructive:-

- 12.7.1 the Bank may on receiving such notice forthwith open a new or separate account with the Borrower in its books and if the Bank does not in fact open such new or separate account, the Bank shall nevertheless be deemed to have done so at the time when the Bank received or was deemed to have received such notice (hereinafter called “the time of notice”); and
- 12.7.2 as from and after the time of notice, all payments in made by the Borrower and/or the Issuer and/or any party to the Bank shall (notwithstanding any legal or equitable rule of presumption to the contrary) be placed or deemed to have been placed to the credit of the new or separate account so opened or deemed to have been opened as aforesaid and shall not go in reduction of the amount due by the Borrower to the Bank at the time of notice

PROVIDED ALWAYS that nothing in this Section contained shall prejudice the security which the Bank otherwise would have had hereunder for the payment of the monies, costs, charges and expenses herein this Debenture referred to notwithstanding that the same may become due or owing or be incurred after the time of notice.

### **SECTION 12.8 RIGHT OF CONSOLIDATION AND SET-OFF**

The Borrower and the Issuer hereby agree that the Bank may at any time without notice after the occurrence of an Event of Default or in making demand notwithstanding any settlement of account or other matter whatsoever:-

- 12.8.1 combine or consolidate all or any of the then existing accounts of the Borrower and/or the Issuer singularly or jointly including accounts in the name of the Bank or of the Borrower or the Issuer jointly with others (whether current deposit loan or of any other nature whatsoever whether subject to notice or not and whether in Ringgit Malaysia or in any other currency, and wheresoever situate; and
- 12.8.2 set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any monies obligations and liabilities of the Borrower to the Bank, whether such liabilities be present future actual contingent primary collateral several or joint. If any of the liabilities of the Borrower are contingent, the Bank shall be entitled to set-off and transfer any

sum standing to the credit of any account or accounts of the Borrower and/or the Issuer, as the case may be, towards satisfaction of such contingent liabilities and in the event that the Borrower's actual liabilities shall be less than the amount set-off by the Bank, the Bank shall refund such surplus amount to the Borrower and/or the Issuer, as the case may be. Where such combination set-off or transfer requires the conversion of one currency into another, such conversion shall be calculated at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing the currency for which the Borrower and/or the Issuer is liable with the existing currency so converted.

#### **SECTION 12.9 IRREVOCABLE RIGHT TO DEBIT ACCOUNT**

The Issuer hereby agrees that without prejudice to any other rights and remedies of the Bank the Bank shall have the right (without being obliged to) at any time without prior notice to debit the Borrower's or the Issuer's current or other account or accounts with the Bank and/or to debit the balance of any overdraft facility (if any) with all accrued interest unpaid loan instalments of principal and interest overdue trust receipts term bills banker's acceptances outstanding in respect of performance guarantees indemnities bonds valuations fees insurance premia fees commissions charges the costs and expenses referred to Section 12.15 herein and all other monies due on the Banking Facilities PROVIDED THAT no such debiting shall be deemed to be a payment of the amount due (except to the extent of any amount in credit in the Borrower's or Issuer's current or other account or accounts) or a waiver of any Event of Default under this Debenture or any other agreement relating to the Banking Facilities. If such debiting causes the Borrower's or Issuer's account or accounts to be overdrawn the rate as specified in the Facilities Agreement or such rate as may from time to time be prescribed by the Bank shall be payable accordingly.

#### **SECTION 12.10 IRREGULARITIES**

This Debenture shall be binding on the Issuer and its successor in title notwithstanding that the borrowing or incurring of the liabilities under this Debenture may be invalid or in excess of the powers of the Issuer or of any director attorney agent or other person purporting to borrow or act on behalf of the Issuer and notwithstanding any irregularity in such borrowing or the incurring of such liabilities.

#### **SECTION 12.11 WAIVER**

Time shall be of the essence of this Debenture but no failure or delay on the part of the Bank in exercising nor any omission to exercise any right power privilege or remedy accruing to the Bank upon any default on the part of the Borrower and/or the Issuer shall impair any such right power privilege or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall any waiver or action by the Bank in respect of any default or any acquiescence to any such default affect or impair any right power privilege or remedy of the Bank in respect of any other or subsequent default.

#### **SECTION 12.12 CUMULATIVE RIGHTS**

The rights and remedies in this Debenture provided are cumulative and not exclusive of any rights or remedies provided by law.

#### **SECTION 12.13 AVOIDANCE OF PAYMENTS**

No assurance, security or payment which may be avoided under any law relating to bankruptcy or insolvency or under Section 528 or 529 of the Companies Act, and no release, settlement or discharge given or made by the Bank on the faith of any such

assurance, security for payment, shall prejudice or affect the right of such person to enforce the security created by this Debenture in respect of the full extent of the monies thereby secured. It is further agreed that the Bank shall be at liberty at its absolute discretion to retain the security so created as security for the monies and liabilities secured by this Debenture, notwithstanding any release, settlement, discharge or arrangement given or made by the Bank on, or as a consequence of, such termination of liability and, if at any time after such termination a petition shall be presented to a competent court for winding-up of the Issuer, the Bank shall be at liberty, notwithstanding as aforementioned, to continue to retain such security or any part thereof for and during such further period as the Bank in its absolute discretion shall determine and the Issuer agrees that such security shall be deemed to have been and to have remained held by the Bank as and by way of security for the payment of the monies and liabilities secured by this Debenture.

#### **SECTION 12.14 MODIFICATION AND INDULGENCE**

The Bank may at any time and without in any way affecting the validity of the security liabilities and obligations hereby created:-

- 12.14.1 determine vary or increase the Banking Facilities and/or any banking facility granted to the Borrower and may open and/or continue any account or accounts current or otherwise with the Borrower at any branch or branches of the Bank;
- 12.14.2 grant to the Borrower, the Issuer or to any Security Party any time or indulgence;
- 12.14.3 renew any bills notes or other negotiable securities;
- 12.14.4 deal with exchange release or modify or abstain from perfecting or enforcing any securities or other guarantees or rights it may now or at any time hereafter or from time to time have from or against the Borrower, the Issuer or any Security Party or any other person;
- 12.14.5 compound with the Borrower, the Issuer or any Security Party or any other person;
- 12.14.6 at the request of the Borrower or Issuer, accept payment of any money due or becoming due hereunder by such increased or reduced instalments as may be agreed or agree to suspend payments in reduction of principal or give such further time for payment or grant such indulgences as may be agreed;
- 12.14.7 grant further facilities to the Borrower, reinstate, vary, interchange, substitute or convert the Banking Facilities or any of them or any the principal limits or sub-principal limits of the Banking Facilities;
- 12.14.8 review revise amend or vary the terms and conditions of the Banking Facilities granted to the Borrower;
- 12.14.9 have recourse to all or any remedy or means for recovering the money hereby secured which may be available for such purpose at such time and in such order and manner as the Bank may think fit;
- 12.14.10 enforce or fail to or refuse to or omit to or neglect to enforce this Debenture or any other security or any of the Bank's rights or remedies thereunder.

**SECTION 12.15 COSTS**

The Issuer shall be liable to pay all costs charges and expenses incurred by the Bank in connection with or incidental to this Debenture and pursuant to the Power of Attorney referred to in Section 11.5 herein including the Bank's solicitors fees (on solicitor and client and full indemnity basis) in connection with the preparation execution stamping registration perfection and enforcement of this Debenture and the documents related thereto or in the giving of any notice or in the making of any demand under pursuant to or in respect of this Debenture or any money secured by this Debenture and all other monies whatsoever paid by the Bank in respect of the said costs charges express and expenditure or otherwise howsoever and all or any other sums and monies paid or expended by the Bank pursuant to the provisions of this Debenture express or implied and until payment the said sums shall bear interest thereon at the rate specified in the Facilities Agreement or such rate as may from time to time be prescribed by the Bank with monthly rests as well after as before any demand or judgment and irrespective of whether or not the banker customer relationship has ceased or been terminated to the date of full payment and the said sum together with interest shall be debited to the Issuer's or the Borrower's account and shall be deemed to be secured under this Debenture and shall form part of the first payment due under this Debenture.

**SECTION 12.16 ASSIGNMENT**

This instrument shall be binding upon and enure to the benefit of the Issuer and the Bank and their respective successors and assigns except that the Issuer may not assign its rights or obligations hereunder. The Bank shall be entitled to assign the whole or any part of its rights or obligations under this Debenture and the costs of such assignment shall be borne and paid by the Issuer and the Borrower. If the Bank desires to effect such an assignment it shall notify the Issuer in writing.

**SECTION 12.17 RECONSTRUCTION OF THE BANK, THE BORROWER OR THE ISSUER**

12.17.1 The security, liabilities and/or obligations created by this Debenture shall continue to be valid and binding for all purposes whatsoever notwithstanding:-

- (a) any transfer or assignment of the business or operations or assets or liabilities of the Bank; or
- (b) any change by amalgamation consolidation reconstruction or otherwise which may be made in the constitution of the Bank or of any company by which the business of the Bank may for the time being be carried on and shall be available to the company carrying on that business for the time being.

12.17.2 The security, liabilities and/or obligations created by this Debenture shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation liquidation reconstruction or otherwise however in the constitution of the Borrower and/or the Issuer.

The expression "the Borrower or Issuer" in this Debenture includes the corporation for the time being deriving title under the Borrower or the Issuer respectively and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Borrower and/or the Issuer shall in any way affect the security liabilities and/or obligations created hereunder in relation to any transaction whatsoever whether past present or future.

**SECTION 12.18 NOTICES, LEGAL PROCESS AND PROCESS SERVICE AGENT****Notice**

- 12.18.1 Any demand, request, notice (including a notice or statement generated by the Bank's computer which need not be signed) or communication (collectively the "Notices") by or on behalf of the Issuer or the Bank must be in writing in English or Bahasa Malaysia.
- 12.18.2 Any Notices that the Bank send to the Issuer may be :-
- (a) delivered by hand to the address of the Issuer as stated in this Debenture or such other address last known to the Bank;
  - (b) sent by post (registered, AR registered, ordinary or otherwise) to the Issuer's address as stated in this Debenture or such other address last known to the Bank;
  - (c) sent by facsimile transmission to the facsimile number of the Issuer last known to the Bank;
  - (d) sent by electronic mail to the electronic mail address of the Issuer last known to the Bank;
  - (e) sent by short messaging system (SMS) to the mobile phone number of the Issuer last known to the Bank;
  - (f) made by posting on the Bank's website; or
  - (g) made by insertion in any statement of account which the Bank sends to the Issuer.
- 12.18.3 The Notices will be deemed to have been received by the Issuer:-
- (a) at the time of delivery at the address of the Issuer, if delivered by hand;
  - (b) on the third (3rd) day (including the day of posting) from the date it is posted, even if it is undelivered or returned;
  - (c) at the time the facsimile transmission is completed;
  - (d) at the time the electronic mailing is completed;
  - (e) at the time the sending by short message system (SMS) is completed;
  - (f) at the time of posting on the Bank's website; or
  - (g) at the time the statement of account is deemed to have been received by the Issuer.
- 12.18.4 The Bank will not be responsible for what may happen to the Notices after they are sent, for example if the Notices is delayed, intercepted, lost, fails to reach or is disclosed to any one during transit.
- 12.18.5 The Bank reserves the right to serve on the Issuer any Notice by:-
- (a) advertisement in any one daily newspaper and such Notice will be deemed to have been served on the Issuer on the day the advertisement appears in the newspaper regardless of whether the Issuer have actually seen the advertisement; or
  - (b) displaying at any of the Bank's place of business, any of its branches or premises and such Notice will be deemed to have been served on the Issuer on the day of such display regardless of whether the Issuer have actually seen the displayed notice.
- 12.18.6 The Issuer must notify the Bank in writing immediately on any change in the address, facsimile number, electronic mail address or mobile phone number of the Issuer.
- 12.18.7 If the Issuer do not inform the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Issuer, the Issuer agrees that the Bank may at its absolute discretion rely on:-

- (a) any address as stated in this Debenture; or
- (b) any address, facsimile number, electronic mail address or mobile phone number the Bank obtain from any communication purportedly issued by the Issuer to the Bank or last known to the Bank.

12.18.8 The Bank's rights under this Debenture and other Security Documents are not to be affected by any failure on the part of the Borrower, the Issuer and/or the Security Party to notify the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Issuer, the Borrower and/or the Security Party.

12.18.9 Notices from the Issuer to the Bank may be sent by personal delivery or ordinary mail.

12.18.10 Notices by the Issuer to the Bank must be duly signed by the Issuer or, if permitted by the Bank, the Issuer's authorized signatories. The Notices must be served on the Bank at the address specified by the Bank from time to time. Notices are deemed received by the Bank upon actual receipt of the Notices and any additional documents or information which the Bank may require to verify the source of the Notices.

#### **Legal Process**

12.18.11 In addition to and not in substitution of any mode of service that may be permitted or prescribed by any written law in force for the time being, any service of Legal Process by or on behalf of the Bank can be effected on the Issuer:-

- (a) by leaving a copy at the address as stated in this Debenture or in any communication purportedly issued by the Issuer to the Bank or last known to the Bank and it shall be deemed to have been duly received by the Issuer on the day it was left at the address; or
- (b) by sending a copy via prepaid registered or ordinary post to the address as stated in this Debenture or in any communication purportedly issued by the Issuer to the Bank or last known to the Bank and it shall be deemed to have been duly received by the Issuer on the third (3rd) day (including the day of posting) from the date it is posted, even if it is undelivered or returned.

#### **Agent for Service of Legal Process**

12.18.12 If the Issuer resides outside Malaysia or does not have a permanent address in Malaysia (for individuals) or primarily conduct its business outside Malaysia or is a company incorporated outside Malaysia, the Issuer is required at all times to appoint and maintain a Process Service Agent in Malaysia to accept service of all Legal Process on behalf of the Issuer arising out of or connected to this Debenture and the Security Documents. The Issuer shall not revoke, cancel or withdraw the authority of the Process Service Agent without having first appointed a new Process Service Agent and notified the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.

12.18.13 If for any reason whatsoever the Process Service Agent no longer serves as the Issuer's Process Service Agent, the Issuer shall be required to immediately appoint another Process Service Agent and notify the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.

12.18.14 Service on the Process Service Agent shall be effected in the same manner specified in Sections 12.18.1, 12.18.2, 12.18.3 and 12.18.4.

#### **SECTION 12.19 RIGHT TO CONCURRENT REMEDIES**

Notwithstanding any provision herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default or breach of any of the provisions in this Debenture or other security documents by the Issuer and/or the Borrower, the Bank shall have the right to exercise concurrently all or any of the remedies available whether by this Debenture or other security documents or by statute or otherwise, including but not limited to pursuing all remedies of sale or possession pursuant to this Debenture or other security documents and civil suit to recover all principal sums, interest, monies and liabilities outstanding due payable or agreed to be payable by the Borrower, the Issuer or any Security Party from time to time under or pursuant to this Debenture and/or any of the other security documents or otherwise in respect of or arising from the Banking Facilities.

#### **SECTION 12.20 INCORPORATION OF THE FACILITIES AGREEMENT**

The terms and conditions therein the Facilities Agreement are hereby incorporated into this Debenture (with such modifications as are required to render the same applicable to the Issuer) as though set forth herein at length and shall apply mutatis mutandis hereto. In the event of any conflict between the provisions of the Facilities Agreement and the provisions of this Debenture, the provisions of this Debenture shall prevail.

#### **SECTION 12.21 SEVERABILITY**

Any term condition stipulation provision covenant or undertaking of this Debenture which is illegal void prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such illegality voidability prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality voidability prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal void or unenforceable any such term condition stipulation provision covenant or undertaking in any other jurisdiction.

#### **SECTION 12.22 LAW APPLICABLE**

This Debenture shall be governed by and construed in all respect in accordance with the laws of Malaysia but in enforcing this Debenture, the Bank shall be at liberty to initiate and take action or proceeding or otherwise against the Issuer in Malaysia and/or elsewhere as the Bank may deem fit and the parties hereto hereby agree that where any action or proceeding is initiated and taken in Malaysia they shall submit to the non-exclusive jurisdiction of the Court of the States of Malaya or Borneo, as the case may be, in all matters connected with the obligations and liabilities of the parties hereto under or arising out of this Debenture and the service of any writ or summons or any legal process in respect of any such action or proceeding may be effected on the Issuer and/or the Bank by forwarding a copy of the writ or summons and statement of claim or other legal process by registered post to their respective addresses as indicated herein.

#### **SECTION 12.23 COMPLIANCE WITH COURT ORDERS**

The Bank and the Group can act in any way they see fit, without consulting the Issuer beforehand, if they are served with a court order issued by a court of any jurisdiction. The Issuer agrees not to hold the Bank or the Group liable for any loss or damage in connection with their actions.

**SECTION 12.24 COUNTERPARTS**

This Debenture may be executed in any number of counterparts, all of which taken together and when delivered to the Bank shall constitute one and the same instrument and any of the parties hereto may execute this instrument by signing any such counterpart.

**SECTION 12.25 STAMPING TO SECURE ADDITIONAL BANKING FACILITIES**

This Debenture shall secure the repayment by the Borrower and the Issuer to the Bank of the Banking Facilities in such sum for principal as the ad valorem stamp duty paid and endorsed from time to time on the original of the Principal Instrument(s) as specified in **Schedule III** hereto together with interest thereon and all other monies payable by the Borrower and the Issuer to the Bank hereunder and the Issuer hereby undertakes to complete and execute all forms and other documents as are necessary to enable the Bank's solicitors to file any particulars which may be necessary as may be required under the provisions of the Companies Act and to pay all fees and expenses in connection with or incidental thereto including the Bank's solicitors' fees (on a full indemnity basis).

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**SCHEDULE I**

**SECTION 1 : Authority for Issuance of this General Debenture**

Issued pursuant to:-

- a) Clause                      of the Issuer's Constitution/Memorandum of Association;
- b) Articles                      of the Issuer's Articles of Association; and
- c) a Resolution of the Directors of the Issuer passed on the                      day of                      , 20   .

**SECTION 2 : Date of this General Debenture**

Dated this                      day of                      , 20

**SECTION 3 : Address of the Bank**

**SECTION 4 : Particulars of the Issuer**

**SECTION 5 : Particulars of the Borrower**

**SCHEDULE II [SECTION 1]  
AGREEMENT REFERRED TO IN SECTION 1**

**SCHEDULE III [SECTION 12.25]****STAMP DUTY ENDORSEMENT**

1. For the purpose of Section 4(3) of the Stamp Act, 1949, this Debenture shall be deemed to be the \*Principal/Subsidiary/Collateral/ and Substituted Instrument.
- \*2. The following instruments:

together with all other charges documents and agreements created or to be created in favour of the Bank to secure the Banking Facilities granted or to be granted to the Borrower by the Bank from time to time on which ad valorem stamp duty has been or will be paid shall for the purpose of Section 4(3) of the Stamp Act, 1949 be deemed to be the Principal Instrument(s).

3. For the purpose of Section 4(3) of the Stamp Act, 1949, the following debenture(s)  
\*is/are the \*Principal Instrument(s) / Subsidiary Instrument(s):

(hereinafter referred to as “the existing debenture(s)” and it is hereby agreed and declared by the Borrower that the Banking Facilities is granted by the Bank to the Borrower upon the terms and subject to the conditions stipulations covenants undertakings representations and warranties contained in this Debenture in lieu of the terms and conditions in the existing debenture(s) and that this Debenture shall be the substituted instrument.

AS WITNESS the Common Seal of the Issuer and the Borrower was hereunto duly affixed and the Attorney of the Bank has hereunto set his hand.

**The Issuer**

The Common Seal of the )  
abovenamed Issuer )  
)  
was hereto affixed in the )  
presence of:- )

.....  
Director

.....  
Director / Secretary

**The Borrower**

The Common Seal of the )  
abovenamed Borrower )  
)  
was hereto affixed in the )  
presence of:- )

.....  
Director

.....  
Director / Secretary

**The Bank**

Signed for and on behalf of )  
the Bank by its attorney )  
in the presence of:- )  
)  
)

.....