

DRAFT DEBENTURE TRUST DEED

THIS TRUST DEED is made this..... day of..... 2007, between..... incorporated under the Companies Act, 1956 with its registered office at..... (hereinafter called "the Company") of the One Part, and Mr..... and Mr..... (hereinafter called "the Trustees") of the Other Part.

WHEREAS by Sub-Clause..... of Clause..... of its Memorandum of Association, the company is authorised to borrow or raise and secure the payment of money by the issue of debentures charged upon any of the company's property.

AND WHEREAS the Directors of the company being duly empowered in that behalf by Article No. of the Articles of Association of the company have decided by a resolution passed in pursuance to Section 292 of the Companies Act, 1956 by the Board of directors in the meeting of the Board held on..... to raise a sum of Rs..... by issue of..... First Mortgage Debentures of Rs..... each, bearing interest at..... per cent per annum framed in accordance with the forms set for in the *First Schedule* hereto and to secure the same by mortgaging with the trustees the properties described in the *Second Schedule* hereto.

AND WHEREAS the trustees above mentioned have consented to act as trustees for the debenture holders.

NOW THIS DEED WITNESSETH AND IT IS HEREBY MUTUALLY AGREED TO AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That in these presents unless there be something in the subject or context consistent therewith the expression following shall have the meaning hereafter mentioned, that is to say:
 - (a) "Company" means..... Ltd.
 - (b) "Trustees" means Mr..... or any other trustees hereof for the time being.
 - (c) "Debentures" means the debenture of the company in the form set out in the *First Schedule* hereto for the time being outstanding and entitled to the benefit of these presents.
 - (d) "Debenture holders" means the holder for the time being of the debenture issued and entered in the register of debenture holders, mentioned on the conditions endorsed on the debentures on the holder of the debentures.
 - (e) "Mortgaged premises" means the property belonging to the company described in the *Second Schedule* hereto and comprised in the security of the debenture holders.

Words denoting the singular include the plural and *vice versa* unless the contrary appears from the context.

- (f) Act means the Companies Act, 1956 (I of 1956) and any modification or re-enactments thereof.
2. The debentures entitled to the benefit of these presents shall consist of a series of number of debentures of Rs..... each, aggregating to Rs..... in all to rank *pari passu* without any preference or priority by reason of the date of issue or otherwise and secured by the mortgage hereby created on the mortgaged premises.
3. The company hereby covenants with the trustees that the company will on the..... day of..... or such earlier day as the principal moneys shall become payable under clause 7 hereof pay the debenture holders the amounts secured by their debentures respectively, and in the meantime will pay interest to the debenture holders on the day of..... 20... in each year, the first payment of interest to be made on the day of..... 20...
4. All payments due by the company in respect of the Debentures issued hereunder whether of interest, principal or premium shall be made by cheque or warrant drawn by the company on its bankers and the company shall make at its own expenses all arrangements, with its Bankers as shall be necessary to ensure that such cheques or warrants shall be encashable for the amount for which they are expressed without any deduction whatsoever at the office of its bankers in

Delhi or such other places in the Union of India as the Trustees may require.

5. In consideration of the debentures hereby authorised aggregating to Rs..... the company, as the beneficial owner, hereby mortgages unto the trustees all the fixed plant and machinery and fixture at present existing at the company's factory and described in part A of the Second Schedule hereto and which may be acquired by the company hereafter or fixed or erected hereafter at its factory for the benefit of the debentureholders and the property described in Part B of the Second Schedule as security for the due payment of principal moneys amounting to Rs..... in aggregate with interest and all other charges, expenses and other dues, the payment of which has been secured by a charge on the mortgaged premises under these presents. The charge hereby created on the property mentioned in Part A of the Second Schedule shall be the specified charge, while that on the property included in Part B of the Second Schedule shall rank as floating charges.

The trustees may, at any time, by notice in writing to the company, convert the said floating charge into a specific charge as regards any assets included in the Second Schedule and specified in the notice in case it is, in the opinion of the trustees in danger of being seized or sold under any sort of distress or execution levied or threatened or in any other case.

6. The company shall hold and enjoy all the mortgaged premises and carry on therein and therewith the business or any of the business mentioned in the Memorandum of Association of the company until the security hereby constituted shall become enforceable under the terms of these presents, in which case the trustees may, in their discretion, without any such request as next hereinafter mentioned and shall upon the request in writing of the holder or holders of..... at least of the debentures, enter upon or take possession of the mortgaged premises, or any of them and may in the like discretion and shall upon the like request sell, call in, collect and convert into money the same or any part thereof with full power to sell any of the same premises either together or in parcels, and either by public auction or private contract, and either for a lumpsum or for a sum payable by instalments or for a sum on account and a mortgage or charge for the balance and with full power upon every such sale to make any special or other stipulations as to title or evidence, or commencement of the title or otherwise which the trustees shall deem proper and with full power to modify or rescind or vary any contract for sale of the said premises or any part thereof and to re-sell the same without being responsible for any loss which may be occasioned thereby and with full power to compromise and effect compositions and for the purposes aforesaid or any of them to execute and do all such assurance and things as they shall think fit.
7. The principal moneys due to the debenture-holders under this Indenture shall become immediately payable and the security hereby constituted shall become enforceable within the meaning of these presents in each and any of the following events:
- (a) If the company makes default in the payment of any interest which ought to be paid in accordance with these presents.
 - (b) If the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so.
 - (c) If an order has been made by the Court of competent jurisdiction or a special resolution has been passed by the members of the company for winding up the company.
 - (d) If the company acts in contravention of clause..... of its Articles of Association.
 - (e) If it is certified by a Chartered Accountants capable of being appointed as auditor under the Act, that the liabilities of the company exceed its assets.
 - (f) If the company creates or attempts to create any charge on the mortgaged premises or any part thereof without the prior approval of the trustees/debenture holders.
 - (g) If in the opinion of the trustees the security of debenture holders is in jeopardy.

Provided that on the happening of the events specified in sub-clause (a), the permission given by clause 6 to hold and enjoy the mortgaged premises shall not be determined unless and until the trustees shall have first served on the..... company a preliminary notice requiring the

company to pay the interest in arrears and the company shall have neglected for the period of 30 days to comply with such notice.

8. As soon as the principal money shall become payable and the security enforceable under the last preceding clause 7 (and unless the time for payment and the security to be enforced has been expressly extended by the debenture holders), the trustees shall enter upon and take possession of the mortgaged premises and shall forthwith take steps to consult the debenture holders for the purpose of determining whether the business of the company may be allowed to be carried on or whether the mortgaged premises shall be realised by sale or otherwise.
9. Until the happening of some one of the events mentioned in clause no. 7 of this Indenture, the trustees shall not be in any manner bound to interfere with the management of affairs of the said business except to the extent they may consider necessary for the preservation of the mortgaged premises or any part thereof.
10. If the debenture-holders resolve not to allow the business of the company to be carried on as mentioned in clause 9 above but to realise the security, the trustees shall after giving a notice of 30 days in writing to the company, proceed to realise the mortgaged premises by sale or otherwise and, in doing so, shall conform to discretion, if any, given by debenture-holders.
11. The trustees shall apply the proceeds of such sale or other mode of realisation in the following manner, that is to say, that the trustees shall pay:
 - (a) In the first place all costs, charges and expenses incurred in or about such sale or the performance or execution of trust or otherwise in relation to these presents or otherwise in respect of the security, including the remuneration of the trustees.
 - (b) Secondly, the interest for the time being due and owing on the debentures.
 - (c) Thirdly, the principal money then due and owing to debenture-holders.
 - (d) And lastly, the surplus, if any, to the company or its assignee.Provided that if the said money shall be insufficient to pay all such interest or principal money in full, then the said moneys shall be paid rateably and without preference or priority among all debenture-holders of this series according to the amount of the face value of the debentures held by them, but all interest shall be paid before any principal money.
12. When all the principal moneys and secured by these presents shall have been paid and satisfied, the trustees shall forthwith, upon the request and at the cost of the company and on being paid all the costs, charges and expenses properly incurred by the trustees in relation to the security, reconvey, reassign, release and surrender the mortgaged premises or so much or the same as shall not have been sold or disposed of, unto the company or its assigns.
13. If the company shall, at any time during the continuance of the security, be desirous of selling, demising or otherwise disposing of or dealing with any part of the mortgaged premises otherwise than in respect of the floating charge the ordinary course of the company's business, the trustees may, if satisfied that the debenture-holders' security shall not be thereby prejudiced, assent to or concur in such sale, demise, disposal or other dealing, and may, if necessary, release the property in question from the trust under this deed on such terms as the trustees may determine.
14. The company hereby covenants with the trustees:
 - (i) That the moneys secured by this deed shall be the first mortgage and charge on the mortgaged premises and shall take precedence over all other moneys which may hereinafter be borrowed by the company against the security of the premises.
 - (ii) that the company shall maintain the mortgaged premises and any and every part thereof in a fit and efficient condition of repair and shall keep the said property duly insured against risk of fire, riot, civil and war risks with such insurers and in such manner as the trustees may determine from time to time and, in default, the trustees shall carry out repair and keep insured the mortgaged premises in the interest of the debenture-holders, and shall be entitled to the immediate payment of such expenditure in full.
15. (a) The company shall in each and every year during the continuance of this security pay to the

Trustees for the time being of these presents as and by way of remuneration for their services as Trustees the sum of Rs..... (Rupees..... only) per annum in addition to all legal, travelling and other costs, charges and expenses incurred by the Trustees on their officers, employees or agents in connection with the execution of the trust hereof (including all the costs, charges and expenses of and incidental to the approval and execution of these presents) and all other documents effecting the security herein and the first of such payments to be made proportionately for the period and the said remuneration shall continue to be payable until the trust hereof shall be finally discharged. The trustees acknowledge having received from the company a sum of Rs..... (Rupees..... only) as their fee for agreeing and accepting the trusteeship of these presents.

- (b) The company shall pay to the trustees all legal travelling and other costs, charges and expenses incurred by them or their agents in connection with execution of trusts of these presents including costs, charges and expenses of and incidental to the approval and execution of these presents and all other documents affecting the security herein and will indemnify them against all actions, proceedings, costs, charges, expenses, claims and demands whatsoever which may arise or be brought or made against or incurred by them in respect of any matter or thing done or permitted to be done without their wilful default in respect of or in relation to the mortgaged premises.
16. The trustees hereof being a corporate body may, in the execution and exercise of all or any of the trusts powers, authorities and discretions vested in them by these presents act by responsible officers or a responsible officer for the time being of the trustees and the trustees may also whenever they think it expedient in the interests of the debenture-holders delegate by power of attorney or otherwise to any such officer or officers all or any of the trusts power, authorities, and discretions vested in them by these presents and any such delegations may be made upon such terms and conditions and subject to such regulations including power to sub-delegate as the trustees may, in the interest of the debentureholders, think fit and the trustees shall not be bound to supervise the proceedings of or be in any way responsible for any loss incurred by reason of any misconduct or default or any mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of any such delegate. The trustees, however shall be liable for breach of trust, knowingly and intentionally committed by such trustees or their delegate subject to the permission of Section 119 of the Act.

Note: *This clause is suitable where the trustees is a bank. In case of individual this be modified suitably.*

17. The debenture holders may, by an ordinary resolution, remove the trustee or trustees, or the trustee or trustees may, with the consent of the directors of the company and of the majority of the debenture holders in writing resign or retire from trusteeship.
18. In the event of death, bankruptcy, disability or resignation of any trustee or trustees, another trustee or trustees shall be appointed who shall thereafter have and exercise all powers of the trustee or trustees under these presents. The power of appointing a new trustee or trustees shall be vested in the directors, but no such trustees shall be appointed by the company until his appointment has been approved by an ordinary resolution of the debenture holders.
19. The trustees may by agreement with the directors of the company modify the terms of the deed in any manner that may be necessary to meet any requirement or contingency, provided that the trustees are satisfied that such modifications are in the interests of the debenture holders.
20. If any debenture is proved to the satisfaction of the company to have been lost, the company shall issue a fresh debenture on payment of a fee of Rs..... for each such debenture and on such indemnity as the directors may think fit.
21. The company hereby covenants with trustees that company will at all times during the continuance of the security (except as may be otherwise previously agreed in writing by the trustees).
- (a) carry on and conduct its business in proper and efficient manner with due diligence and

efficiency with sound financial standing and pay all rents, cesses on mortgage premises, and insured these properties against fire and natural calamities;

- (b) to keep proper books of account as required under the Act and let them be open to inspection of trustees during business hours;
- (c) to give trustees such information as he or they may require relating to business, mortgage property and the affairs of the company;
- (d) not to effect any scheme of amalgamation, merger or reconstructions during the period of debenture or any part thereof remain outstanding;
- (e) not to utilise any portion of the debentures for purposes other than those for which the same are issued;
- (f) not to make any material changes in the existing management set up. Not to declare any dividend to the equity (or preference shareholders, if any) in any year until the company has paid or made satisfactory provision for payment of the instalments of principal (if it has become due) and interest due on the debentures;
- (g) allow the debenture holders a right to appoint a nominee director on the Board of the company. The said director so appointed shall not be liable for rotation nor required to hold any qualification. Thus, if need be, the company shall take immediate steps to amend its Articles of Association accordingly.

22. The company hereby further covenants with the Trustees that the company shall duly perform and observe the obligations hereby imposed upon it by this deed.

IN WITNESS WHEREOF THE COMPANY has caused its Common Seal to be affixed to these presents and the trustees have hereto set their hands the day and year above written.

Witnesses:

Common Seal of the.....
affixed in the presence of

(DIRECTOR)

(TRUSTEES)