

CONSTITUTION
of
SILVER FERN FARMS LIMITED

Adoption of new constitution - I certify that this document was adopted as the Constitution of the Company by Special Resolution on 30 July 2009.



E R H Garden
Chairman

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1 INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

"Act" means the Companies Act 1993 as amended from time to time or any Act which replaces that Act.

"Associate" has the meaning given to that term in clause 1.3 of the Schedule to this Constitution.

"Board" means Directors who number not less than the required quorum, acting together as a board of directors.

"Board Appointed Director" means a Director appointed pursuant to clause 11.6.

"Class" means a class of Shares having attached to them identical rights, privileges, limitations, and conditions, provided that differing entitlements to amounts payable on redemption of Redeemable Shares shall not, of itself, render the relevant Shares as Shares of a different Class.

"Company" means Silver Fern Farms Limited.

"Constitution" means this constitution as it may be altered from time to time in accordance with the Act.

"Co-op Act" means the Co-operative Companies Act 1996 as amended from time to time or any Act which replaces that Act.

"Current Supplier" means a Shareholder who has supplied Stock to the Company during the current Season and/or the immediate past Season.

"Director" means a person appointed or elected as a director of the Company in accordance with this Constitution.

"Distribution" means, in relation to a distribution by the Company to a Shareholder:

- (a) the direct or indirect transfer of money or property, other than the Company's own Shares, to or for the benefit of the Shareholder; or
- (b) the incurring of a debt to or for the benefit of the Shareholder,

in relation to Shares held by that Shareholder, and whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means, and where the applicable provisions of the Act so require, includes a Marketing Rebate.

"Farmer Elected Director" means a Director elected pursuant to clause 12, and includes a Director appointed as such, pending election, in accordance with clause 12.7.

"Financial Year" means the financial year of the Company and, if the financial year is altered, means the financial period for which financial statements are prepared and submitted to Shareholders.

"Holder" or **"Shareholder"** means, in relation to a Share, the person whose name appears in the Share Register as the holder of that Share.

"Interest Group" has the meaning set out in the Act.

"Interested" in relation to a Director, has the meaning set out in Section 139 of the Act.

"Interests Register" means the interests register kept under Section 189(1)(c) of the Act.

"Major Transaction" has the meaning set out in Section 129(2) of the Act.

"Marketing Rebate" means a payment or an entitlement to a payment determined at the Board's discretion to a person who has supplied Stock or services to the Company under any Marketing Rebate Supply Method made available by the Company which, by its terms, confers the opportunity to participate in such payments.

"Marketing Rebate Supply Method" means any system or systems made available from time to time, and at any applicable time, by the Company, under which Current Suppliers can earn Marketing Rebates.

"Maximum Holding" means the maximum number of Shares or of Shares in any Class, as determined by the Board, which can be held by any Shareholder and its Associates or in which any Shareholder and its Associates can have a Relevant Interest, in accordance with this Constitution or the terms of issue of the relevant Shares.

"Minimum Holding" means the minimum number of Shares or of Shares in any Class, as determined by the Board, which can be held by any Shareholder in accordance with this Constitution or the terms of issue of the relevant Shares.

"Minimum Supply Requirement" means, until otherwise determined by the Board, the supply to the Company of livestock that is accepted by the Company, numbering not less than 400 Production Equivalents in each of the two years ending on such date or dates as are determined from time to time by the Board in accordance with or for the purposes of the terms of issue of any Shares.

"minute secretary" has the meaning set out in clause 14.5(a).

"Ordinary Resolution" means a resolution passed in accordance with clause 9.3(a).

"Ordinary Shares" means the Shares known as Ordinary Shares issued in accordance with this Constitution and their terms of issue as amended from time to time.

"Person" includes an individual, company, society, body corporate, or any other legal entity (whether incorporated or unincorporated).

"Personal Representative" means, in relation to an individual, the executor, administrator or trustee of the estate of that individual.

"Pool" means a grouping of Stock acquired by the Company and separated into such groups, with such designations and restrictions, and having such consequences, as the Board may determine.

"Production Equivalence System" means a system under which livestock of varying characteristics, species or specifications are assigned an equivalence measure in accordance with a methodology from time to time prescribed by the Board for the purposes of determining:

- (i) entitlements to numbers of Shares to be issued by the Company under any supply method made available by the Company which, by its terms, confers the opportunity to participate in rebate payments; and/or
- (ii) the number of issued Shares in respect of which votes are able to be cast by Current Suppliers at a meeting of Shareholders; and/or
- (iii) such other matters relating to Shares as the Board may determine from time to time.

"Production Equivalent" means a unit of measure derived from the application of any Production Equivalence System.

"Qualifying Shareholder" means a Holder of Ordinary Shares to which clause 9.4(b) or 9.4(c) (as applicable) applies.

"Rebate Shares" means the Shares referred to in clauses 3.5(a)(i) and 3.5(b).

"Redeemable Shares" means a Share which is redeemable in terms of Section 68 of the Act.

"Redeemable Preference Shares 2002" means the Shares referred to in clauses 3.5(a)(iii) and 3.5(d) or such of them as remain on issue from time to time.

"Relevant Interest" has the meaning set out in the Schedule to this Constitution.

"returning officer" has the meaning set out in clause 12.6(c).

"Season" means the period from 1 September in any year to 31 August in the following year, or such other period as the Board may from time to time determine.

"Share" means a share in the Company.

"Share Register" means the share register for the Company kept under Section 87 of the Act.

"Solvency Test" has the meaning set out in Section 4 of the Act.

"Special Meeting" means a meeting of Shareholders entitled to vote on an issue, called in accordance with clause 10.6(c) or Section 121 of the Act.

"Special Resolution" means a resolution passed in accordance with clause 9.3(b).

"Stock" means livestock acquired by the Company and such other goods or produce as may be designated by the Board from time to time as being Stock.

"Supplier" means a person who has supplied Stock (whether as principal or agent) to the Company but who is not a Current Supplier.

"Supplier Investment Shares" means the Shares referred to in clauses 3.5(a)(ii) and 3.5(c) or such of them as remain on issue from time to time.

“Working Day” means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the 1st day of January in any year falls on a Friday, the following Monday; and
- (d) if the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

1.2 **Terms defined elsewhere**

Terms defined in the Act, the Co-op Act or the Securities Act 1978 shall where used in this Constitution have the same meaning as given to those terms by the Act, the Co-op Act or the Securities Act 1978, as the case may be, and where the same words or expressions are defined:

- (a) in the Act and in the Securities Act 1978, the definitions in the Act will prevail; and
- (b) in the Act and the Co-op Act, the definitions in the Co-op Act will prevail.

1.3 **Headings**

Headings are for guidance only and shall not affect the interpretation of this Constitution.

1.4 **Section References do not affect Constitution**

Clauses in this Constitution which expressly refer to a section in the Act shall not prevent other clauses in this Constitution from affecting or relating to that section.

1.5 **Construction**

In this Constitution:

- (a) references to sections are to sections of the Act or the Co-op Act, as applicable, and references to clauses are to clauses of this Constitution;
- (b) unless the context requires otherwise:

- (i) words importing the singular include the plural and vice versa, and one gender includes the other genders;
 - (ii) words importing persons include firms, corporations, unincorporated associations and authorities, and firm includes partnership;
 - (iii) "person" in relation to the appointment of a Director means an individual; and
 - (iv) where there are defined terms those terms may be referred to with or without capital letters unless the context otherwise requires;
- (c) powers conferred on the Company, the Board, a Director or a Shareholder may be exercised at any time and from time to time;
 - (d) the Schedule forms part of this Constitution; and
 - (e) references to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision.

2 **APPLICATION OF THE ACT**

2.1 **Effect of Act on Constitution**

As between the Act, the Co-op Act and this Constitution:

- (a) except to the extent that the provisions of the Act or the Co-op Act are amended, negated or modified by this Constitution as permitted by the Act or the Co-op Act, the provisions of the Act or the Co-op Act shall, as applicable, prevail; and
- (b) this Constitution shall have no effect to the extent that it contravenes the Act or the Co-op Act.

2.2 **Constitution Binding**

Subject to the provisions of the Act, this Constitution is binding as between the Company and each Shareholder, and as between each Shareholder, as herein set out.

2.3 **Liability of Shareholders**

The liability of Shareholders is limited and no Shareholder shall be liable for the obligations of the Company.

2.4 **Alteration to Constitution**

The Shareholders may alter or revoke this Constitution by Special Resolution.

2.5 **Solvency Test**

The Board shall not make any Distributions to Shareholders unless the Board is satisfied that the Company can comply with the Solvency Test.

2.6 **Contractual Relationships**

For the purposes of all contractual relationships between the Company and each Shareholder the appropriate conditions of contract of the Company for the supply of Stock shall be binding on each Shareholder and the product arising from the processing of that Stock shall belong to the Company.

2.7 **Co-operative purpose of Company**

The principal activity of the Company is carrying on the following as co-operative activities:

- (a) procuring and processing Stock of all kinds and description supplied by or on behalf of Shareholders to the Company and the distribution, marketing and sale of product derived from that Stock;
- (b) entering into commercial transactions with Shareholders;
- (c) supplying or providing Shareholders with goods and services; and
- (d) any other co-operative activities as set out in the Co-op Act.

3 **ADMISSION AS A SHAREHOLDER**

3.1 **Shareholder restrictions**

The Board shall not issue Shares to a person unless that person is eligible to hold Shares under clause 4.12.

3.2 **Person, Company, etc May Hold Shares**

Shares may be held by a firm, individual, body corporate, company, joint holder (as trustee or partner) or any other entity and any such entity may appoint no more than one representative at any meeting of Shareholders at which that Shareholder is entitled to attend and vote.

3.3 **Board's Decision on Entitlement is Final**

The decision of the Board as to whether or not a person is entitled to become a Shareholder shall be final, conclusive and binding on all Shareholders.

3.4 **Application for Shares**

The Board may:

- (a) determine the basis, terms and conditions and other provisions applicable to persons applying for Shares; and
- (b) provide in any contract or terms of supply of Stock that the entering into of that contract or terms of supply is deemed to be an application by that person for Shares.

3.5 **Existing Shares**

- (a) At the date of adoption of this Constitution, the existing share capital of the Company consists of the following:
 - (i) 47,905,679 Rebate Shares;
 - (ii) 24,797,256 Supplier Investment Shares; and
 - (iii) 1,621,974 Redeemable Preference Shares 2002.
- (b) Each of the existing Rebate Shares:
 - (i) was issued in accordance with the Co-op Act and has a nominal value of \$1.00; and
 - (ii) confers on the Holder all the rights, privileges, limitations and conditions attached to the Share at the time of its issue, or subsequently conferred by the Board in accordance with the terms of its issue.
- (c) Each of the existing Supplier Investment Shares:
 - (i) was issued in accordance with the Co-op Act and has a nominal value of \$1.00; and
 - (ii) confers on the holder all the rights, privileges, limitations and conditions attached to the Share at the time of its issue, or subsequently conferred by the Board in accordance with the terms of its issue.

- (d) Each of the existing Redeemable Preference Shares 2002:
 - (i) has a nominal value of \$1.00; and
 - (ii) confers on the Holder all the rights, privileges, limitations and conditions attached to the Share at the time of its issue in accordance with the terms of its issue.

4 **TYPES OF SHARES CAPABLE OF ISSUE**

4.1 **Types of Shares**

Different classes of Shares may be issued and, without limiting the foregoing, Shares may have one or more of the following characteristics:

- (a) be ordinary shares;
- (b) be convertible into shares of another class on such terms, and subject to such conditions as may be prescribed by or determined in accordance with their terms of issue;
- (c) be redeemable at the option of the Company or the Holder, or on a date determined by the Board, for consideration that is determined by the Board and included in the terms of issue, or to be calculated in accordance with a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company;
- (d) confer conditional, preferential, differential or deferred rights to distributions of capital or income;
- (e) confer a right or eligibility, or differential rights or eligibility, to participate in Marketing Rebates and Distributions;
- (f) confer, or not confer, conditional, differential or limited, voting rights;
- (g) have limitations or restrictions on transferability;
- (h) have, or not have, a nominal value (if issued under the Co-op Act);
- (i) impose on the Holders such Maximum Holding and/or Minimum Holding requirements (if any) as may be determined by the Board from time to time in accordance with clauses 4.6 and 4.7; and
- (j) be subject to such other rights, privileges, limitations and conditions as described in this Constitution and as may be determined by the Board in, or in accordance with, the terms of issue of the particular Shares.

4.2 **Convertible Securities**

The Board may issue convertible securities upon such terms and conditions as it thinks fit including the right for the holders of convertible securities to participate, in the same manner and to the same extent as the holders of the Class into which the convertible securities are to be converted, in any issue of securities offered to the holders of such Class.

4.3 **Options**

The Board may issue options on such terms and conditions as shall be determined by the Board. No options may be issued which confer the right on holders to vote other than at meetings of option holders.

4.4 **Consolidation or Subdivision of Shares**

Subject to clause 4.16, the Board may:

- (a) consolidate Shares of any Class so that each Holder of Shares of that Class holds, as near as is mathematically possible, a proportionately fewer number of Shares of that Class; or
- (b) subdivide Shares of any Class so that each Holder of Shares of that Class holds a proportionately greater number of Shares of that Class.

4.5 **Control and ownership limitation on Shares**

The Schedule governs the rights and liabilities affecting control and ownership of Shares.

4.6 **Maximum Holding**

The Board may determine from time to time the maximum number of Shares or the maximum number of any Class of Shares, that may be held by a Shareholder and its Associates or in respect of which a Shareholder and its Associates may have a Relevant Interest, or the maximum percentage that any Class of Shares may bear to any other Class or Classes of Shares, including, without limitation, for voting purposes. Such number or percentage may be reviewed by the Board at any time and increased or decreased. Subject to the applicable provisions of the Act or the Co-op Act, if such number or percentage is decreased the Board may require the sale, surrender or procure the redemption (in which case the Shareholders holding or having a Relevant Interest in excess of that number shall sell, surrender, or the Company shall redeem, as determined by the Board), of such number of Shares as will reduce all holdings or Relevant Interests to that maximum number or the aggregate holdings rateably to the maximum percentage. Clauses 4.8 to 4.10 (inclusive) of this Constitution will apply with all

necessary modifications to the exercise of any power of sale under this clause 4.6.

4.7 **Minimum Holding**

The Board may determine from time to time the minimum number of Shares or Shares of any Class that must be held by any Shareholder, including for the purposes of determining whether any Marketing Rebates are paid to a Shareholder (but without limitation to the Board's discretion to determine that a Marketing Rebate may be paid to a Shareholder holding less than any such minimum number). Upon the Board determining a Minimum Holding, it shall give details to all Shareholders affected by that determination.

4.8 **Sale of Minimum Holdings**

The Board may from time to time give notice to any Shareholders who are holding less than a Minimum Holding of any Class of Shares, as determined by the Board, that it will exercise its powers under this clause 4.8. The powers which may be exercised by the Board are:

- (a) to give that Holder a time period of not less than three months within which that Holder must acquire more Shares of the Class so notified, so as to bring the number of Shares held by that Holder up to the Minimum Holding; and
- (b) if the Holder does not increase his, her or its holding of Shares to that Minimum Holding within the time period specified by the Board, to:
 - (i) require that Holder to sell the Shares of that Class held by that Holder within a time period specified by the Board, and the Board may arrange for the sale of those Shares for that purpose; or
 - (ii) require the surrender or redemption of the Shares of that Class held by that Holder.

4.9 **Power of Attorney**

For the purposes of clause 4.8 the Holder concerned is deemed to have appointed each of the Directors severally as that Holder's attorney to execute all documents relating to the sale, transfer, surrender or redemption of such Shares.

4.10 **Proceeds**

The proceeds of sale, repurchase or redemption of the Shares in accordance with clause 4.8, less all reasonable costs incurred by the Company in respect thereof, shall be held by the Company in trust for the Holder concerned and paid to the Holder.

4.11 **Bonus Shares**

The Board may issue any Shares as fully paid Shares to such Shareholders and in such proportions as the Board may determine.

4.12 **Qualification for Holding Shares**

A person shall only be eligible to hold Shares if:

- (a) that person is a Current Supplier;
- (b) that person has previously qualified as a Current Supplier;
- (c) the Board is satisfied that the person is to become a Current Supplier by the transfer of an interest in farmland or Stock to that person; or
- (d) that person has been, or is a member of a class of persons which has been, approved by the Board, whether in the context of an issue or determining the terms of issue, of Shares or as a permitted transferee of any existing Shares from time to time.

4.13 **Alteration of Class Rights**

If the Shares on issue are divided into different Classes, the Board may implement any proposal and issue any further Shares that:

- (a) rank in any respect in priority to or differentially with any existing Shares or Class of Shares; or
- (b) modify, abrogate or alter the rights attaching to any existing Shares with the prior sanction of a resolution passed by the affirmative votes of the Holders of not less than 75 percent of the Shares affected by the proposal who are present in person or by proxy, entitled to vote and voting on the resolution.

4.14 **Certain Proposals not an Alteration of Rights**

The following proposals shall not be a modification, abrogation or alteration of the rights attached to any Class of Shares on issue:

- (a) the issuing of Shares having different opportunities and eligibility to participate in Marketing Rebates, Pools or other Distributions;
- (b) the acceptance of a surrender of any Shares, or the redemption of any Shares, held by a Shareholder where other Shares of the same class are not being surrendered or redeemed;

- (c) the requirements for compulsory surrender or redemption of any Shares;
- (d) the requirements that a minimum number of Shares of a specified Class be held to qualify a Shareholder for a Distribution or other payment;
- (e) the issuing of any Shares to a Supplier or Current Supplier other than pro-rata;
- (f) the giving of voting rights on Shares, or any Class of Shares, only to Current Suppliers, including by providing for voting rights to be determined from time to time by reference to the quantity, nature and/or species of Stock acquired by the Company under any arrangement implemented or varied from time to time by the Board;
- (g) the payment of differential amounts on redemption or surrender of Shares within the same Class if in accordance with the terms of issue; and
- (h) conversion of Shares into Shares of another Class in accordance with their terms of issue.

4.15 **Share Issue Price**

- (a) Subject to the Act and, if applicable, the Co-op Act, the Board may determine that any Shares issued by the Company have a nominal value. Different classes of Shares may have different nominal values as determined by the Board at the time of issue of each class of Shares. Unless otherwise determined by the Board (but subject to the Co-op Act), the nominal value of any Shares issued with a nominal value shall be \$1.00.
- (b) The issue price of Shares shall be determined by the Board.
- (c) The amount payable on any Shares shall be paid in such manner and at such times as the Board may determine from time to time.

4.16 **Amendments to Nominal Values**

The Shareholders may by Ordinary Resolution amend the nominal value of any Shares which have a nominal value by:

- (a) subdividing the Shares into smaller nominal value denominations; or
- (b) consolidating the Shares into larger nominal value denominations.

4.17 **Minimum Transaction Level for Rebate**

The Board may determine from time to time the minimum amount that a Supplier or Current Supplier must have transacted by way of business with the Company to qualify for the payment of a Marketing Rebate or any Distribution to be made by the Company.

4.18 **Requirements Relating to Marketing Rebate Payments**

If a Supplier or Current Supplier has or may have an entitlement to a Marketing Rebate or Distribution from the Company, the Board may:

- (a) determine to require that Supplier or Current Supplier to hold a specified number and Class of Shares;
- (b) pay and apply any moneys due to that Supplier or Current Supplier by the Company or any Subsidiary in paying up any call or other moneys due and payable on the Shares issued to and held by that Supplier or Current Supplier;
- (c) pay and apply any moneys due to that Supplier or Current Supplier by the Company or any Subsidiary in paying up in whole or in part any Shares held or required to be held by that Supplier or Current Supplier either to attain a Minimum Holding or a minimum number of Shares as determined by the Board under clause 4.7 or otherwise; or
- (d) pay and apply the moneys payable to that Supplier or Current Supplier in reduction or payment of any liability to the Company or any Subsidiary.

5 **ISSUE OF SHARES**

5.1 **Board May Issue Shares**

Subject to the Act, the Co-op Act and this Constitution the Board may issue Shares at any time, and in such number, as the Board may determine. The Board may accept any form of consideration for the issue of Shares.

5.2 **Pro-rata Rights Waived**

The provisions of Section 45 of the Act shall not apply and, subject to clause 5.4, the Board shall be entitled to issue Shares to such persons as the Board determines.

5.3 **Shares Issued May Create Priority Rights**

The issue of further Shares ranking equally with, in priority to, or behind any existing Shares, whether as to voting rights, entitlements to Distributions or

otherwise (each of which may be differential), is expressly permitted and shall not affect the rights which may attach to Shares on issue from time to time.

5.4 **Shares May Only Be Issued to Qualifying Persons**

The Board shall not issue any Shares to persons who do not qualify under clause 4.12 unless the proposed issue:

- (a) has been approved by an Ordinary Resolution which, subject to this Constitution, may also waive any Minimum Holdings or Maximum Holdings (but not for the purposes of clause 2.1 of the Schedule to this Constitution) in respect of the new Shares; or
- (b) has been determined by the Board to be required for the ongoing financial stability of the Company arising from new share capital being required to meet the present and future obligations of the Company.

5.5 **Waiver of Voting and Maximum Number**

Subject to the limitations described in clause 2.1 of the Schedule to this Constitution:

- (a) the Board may, on issuing any Shares pursuant to clause 5.4(b), provide that such Shares shall have no restriction on the number of votes attached to those Shares that can be cast by the Holder; and
- (b) that any restriction as to a Maximum Holding is waived.

6 **PURCHASE OF OWN SHARES**

6.1 **Company May Purchase Own Shares**

The Company is permitted to purchase or otherwise acquire any Shares provided the purchase or acquisition is effected in accordance with the Act.

6.2 **Method of Repurchasing Shares**

In exercising the power in clause 6.1, the Board shall comply with any restrictions and provisions contained in the Co-op Act and/or the Act, as applicable, and may:

- (a) make an offer to all Shareholders in proportion to the Shares held by them;
- (b) make an offer to one or more Shareholders to acquire all or part of their holding of Shares;

- (c) make an offer to Shareholders who hold less than a minimum parcel of Shares as determined by the Board; or
- (d) hold for re-offer as treasury Shares in accordance with the Co-op Act and the Act any Shares purchased or otherwise acquired, subject to the restrictions contained in the Co-op Act and the Act.

6.3 Shares Not Re-issued Must be Cancelled

Any Shares repurchased by the Company, and not held as treasury stock in accordance with, and as limited by, clause 6.2(d), the Act and the Co-op Act shall be deemed to be cancelled on acquisition.

6.4 Board Can Re-offer Treasury Stock

Subject to clause 4.12, the Board in reoffering any Shares held under clause 6.2(d) may reoffer those Shares in such manner as the Board thinks fit.

7 SURRENDER AND REDEMPTION OF SHARES

7.1 Board Can Accept Surrender or Effect Redemption

The Board may accept the surrender of any Shares or effect their redemption, subject to the Board having resolved that the Company will, immediately after that surrender or redemption, satisfy the Solvency Test, and subject to other applicable requirements of the Act and/or the Co-op Act, as applicable, having been complied with.

7.2 Compulsory Surrender or Redemption

The Board shall accept the surrender or procure the redemption by the Company of Rebate Shares and Supplier Investment Shares, and may, at its option, effect the redemption or surrender of any other class of Shares that are by their terms of issue redeemable or subject to surrender, in each case where a Shareholder entitled under the provisions of any of subclauses (a), (b) or (c) (or, in the case of Rebate Shares and Supplier Investment Shares, the provisions to that effect set out in their terms of issue) gives notice to the Company requesting the surrender or redemption of Shares (which notice complies with the applicable requirements of the terms of issue of those Shares) and the following requirements are met:

- (a) the Shareholder has not been a Current Supplier or Supplier during the immediately preceding five years;
- (b) the Shareholder has died and his or her Personal Representative has requested the surrender by giving not less than 60 days' notice in writing to the Company to that effect; or

- (c) the Shareholder, in respect of Shares other than Rebate Shares and Supplier Investment Shares, has permanently disposed of, or permanently changed the use of, the Shareholder's property and other assets with the result that the Shareholder does not have the capacity to continue or resume to be a Current Supplier or Supplier in respect of that property, the notice certifies as to the matters referred to in this clause, and the Board is satisfied that the disposal or change of use is permanent, has occurred on a bona fide arm's length basis to an unrelated third party, and not with the intention or collateral objective of securing for the Holder redemption in circumstances, or at a time or times, where redemption might or would not otherwise be available.

The surrender or redemption shall be effected, and payment of the amount payable on surrender or redemption made (subject to the applicable provisions of the Act and/or the Co-op Act and the applicable terms of issue of the relevant Shares) within 60 days from the receipt of the notice or such longer period (not exceeding 120 days) in any case as the Board determines, and in each of the above circumstances the Board is satisfied that the Company will, immediately after that surrender or redemption, satisfy the Solvency Test.

7.3 **Board May Require Surrender or Redemption**

The Board may, at its option and at its sole discretion, require the surrender or procure the redemption by the Company of any Shares in accordance with their terms of issue and/or where the Holder of those Shares:

- (a) has ceased to be a Current Supplier;
- (b) has failed to comply in a material respect with requirements as to transactions contained in any contract or terms of supply entered into between the Company or any Subsidiary and the Shareholder;
- (c) has failed to pay, within 30 days after due notice requiring moneys to be paid, any moneys due and payable to the Company or any Subsidiary;
- (d) holds less than the Minimum Holding of Shares as determined by the Board pursuant to clause 4.7;
- (e) the Shareholder or any person in which the Shareholder is interested (as set out in Section 139(1) of the Act) is in competition with the business of the Company;
- (f) the surrender or redemption of those Shares is necessary to maintain the co-operative principles of the Company; or
- (g) the Company so agrees, in writing, with the Holder,

and in each of the above circumstances the Board is satisfied that the Company will, immediately after that surrender or redemption, meet the Solvency Test, that the surrender or redemption is in the best interests of the Company and that any other applicable requirements of the Act and/or the Co-op Act have been complied with.

7.4 Date of Surrender or Redemption

Where any surrender or redemption of Shares is made, and in the case of a surrender that surrender is accepted by the Board, that surrender or redemption shall be effective as from the date of the resolution of the Board agreeing to the surrender or redemption unless another date is determined by the Board in accordance with the terms of issue of the applicable Shares, or otherwise provided by the Act or the Co-op Act. Subject to the terms of issue of the applicable Shares, the Shareholder shall not be entitled to any Marketing Rebates or other Distributions declared after that date as so determined, unless the Board otherwise determines, and no other rights shall accrue, nor any right to vote be exercisable, in respect of the Shares surrendered or redeemed. The payment for the Shares being surrendered or redeemed shall be made on such date as the Board determines, or is determined in accordance with the terms of issue of those Shares.

7.5 Amount Payable on Surrender or Redemption

- (a) The amount payable on any Shares surrendered which have a nominal value shall be the nominal value of those Shares on the date on which such surrender is effective, as determined under clause 7.4, provided that if any of those Shares are not fully paid up then the amount payable shall be the amount then paid up in respect of those Shares.
- (b) The amount payable on any Shares redeemed which do not have a nominal value shall be the amount payable in accordance with the terms of issue of those Shares.
- (c) The Board may, by agreement with any Shareholder, determine a lesser value than the nominal value or the amount payable in accordance with the terms of issue of those Shares as being the amount payable on surrender or redemption, and may agree with that Shareholder to satisfy the amount payable by effecting a Distribution, procuring a purchaser for the Shares (which may be the Company) or by other means.

7.6 Surrendered or Redeemed Shares Cancelled

Unless an earlier date is provided by, or determined in accordance with, their terms of issue, immediately upon the payment by the Company of the amount payable on the surrender or redemption of any Shares, those Shares shall be

deemed to be cancelled unless in the case of Shares other than redeemable Shares they are otherwise specified as being treasury stock.

8 TRANSFERS OF SHARES

8.1 Board May Permit Transfers

The Board:

- (a) may permit a Shareholder who is simultaneously transferring a farm and the farming activities carried on by that Shareholder to transfer any Shares to the person acquiring that farm and farming activities so as to enable the orderly transfer of the farm and the Shares in connection with that farming activity, between family members. For that purpose the Board may at its discretion permit the transfer of Shares to facilitate the proposed transaction and may also from time to time (and subject to such conditions as the Board may impose) facilitate other transfers of Shares among Current Suppliers so that any transfer of Shares may be made subject to the prior approval of the Board to:
 - (i) a person who is qualified to hold Shares under clause 4.12;
 - (ii) a Current Supplier or Supplier to whom a Minimum Holding is being transferred or who will hold at least a Minimum Holding after the transfer of those Shares; or
 - (iii) a person approved by the Board or otherwise specified by the Board; and
- (b) may issue Shares on terms which permit their transfer to such persons, on such terms, and subject to such conditions as the Board may from time to time determine in accordance with the terms of issue of such Shares.

8.2 Board Has Discretion to Refuse Transfers

Subject to any specific provision to the contrary in the terms of issue of any Shares, the Board may refuse to register the transfer of any Share, or delay that registration, or decline to recognise any instrument of transfer, in any of the following circumstances:

- (a) where the proposed transferee is not eligible to hold Shares under clause 4.12;
- (b) where the Company has a lien on the Shares;

- (c) except in respect of Ordinary Shares, where the transferor is or was a Supplier or Current Supplier and the proposed transferee is not a Supplier or Current Supplier;
- (d) where it is not proved to the satisfaction of the Board that the proposed transferee is a responsible person;
- (e) where the Board is of the opinion that the proposed transferee is not a desirable person to become a Shareholder;
- (f) where the transferor is indebted or under any liability to the Company or any Subsidiary in respect of those Shares or otherwise, or is in breach of any agreement between the transferor and the Company or any Subsidiary;
- (g) where the proposed transferee is in breach of any agreement between the proposed transferee and the Company or any Subsidiary;
- (h) unless the instrument of transfer is accompanied by the certificate(s) of the Shares to which it relates (if any) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
- (i) where the transferor or the proposed transferee has failed to comply with a requirement of the Board made under clause 8.4 or where the declaration or other information provided to the Company discloses a breach of this Constitution;
- (j) unless the instrument of transfer is in respect of only one Class of Shares;
- (k) where the transferor or the proposed transferee or nominee of such transferee is a person to whom a transfer is prohibited by any statute or regulation or other lawful direction;
- (l) where the proposed transferee will hold less than the Minimum Holding of Shares of that Class or the proposed transferee would hold more than the Maximum Holding of Shares of that Class;
- (m) where the Board considers that the entry of the proposed transferee as a Shareholder can be more properly effected by a surrender or redemption of the Shares which are to be transferred and the issue of new Shares to the proposed transferee in accordance with the provisions of this Constitution;
- (n) where in the opinion of the Board the transfer would not be consistent with the co-operative principles of the Company; or

- (o) where in the opinion of the Board the transfer would constitute, or result in, a breach of this Constitution or non-compliance with the terms of issue of the relevant Shares.

8.3 Refusal to register transfer

If the Board resolves to delay or refuse to register a transfer, the Board shall:

- (a) set out in that resolution the full reasons for so delaying or refusing to register that transfer; and
- (b) within five Working Days of the passing of that resolution give notice to the transferor and transferee of the resolution and the reasons therein stated.

8.4 Disclosure of Ownership or other Interests in Shares

The Board may at any time, by notice in writing, require any Holder or any transferee or proposed transferee of Shares to lodge with the Company within five Working Days of the date of such notice a statutory declaration and/or such other written advice or documents as the Board may require disclosing in respect of any Shares comprised in a transfer, or held by that Holder, full details of the beneficial ownership of those Shares and of each other Relevant Interest in those Shares. The provisions of sections 35, 35A and 35B of the Securities Markets Act 1988 and all statutory regulations referred to in section 35B shall, with all necessary modification, apply in respect of any such notice and the obligations of the relevant transferee or Holder, as if the Company were a "public issuer", and the relevant Shares were "listed voting securities" under the Securities Markets Act and regulations made thereunder.

8.5 Actions on breach

If:

- (a) a holder of Shares or transferee fails to provide a statutory declaration and/or other written advice or documents within the period of five Working Days as required by clause 8.4; or
- (b) the declaration under clause 8.4 shows that any Shares are not held, or will not be held, as required by this Constitution or in accordance with the terms of issue of the relevant Shares; or
- (c) any Shares are transferred in breach of clause 8.1 or to a person that is not eligible to hold Shares under clause 4.12; or
- (d) the beneficial ownership of shares in a company holding Shares (other than Ordinary Shares) is altered so that any person or entity holding more than 50 percent of the voting shares in that company holding Shares (other

than Ordinary Shares) either transfers or otherwise disposes of those voting shares or allows the voting shares on issue by that company to be increased so that such person or entity ceases to hold shares in that company which may exercise more than 50 percent of the voting rights at any shareholders meeting of that company; or

- (e) the beneficial ownership of any Shares other than Ordinary Shares, or the right to exercise or control the exercise of any votes attached to those Shares or any control over those Shares, is held other than by the Holder,

then if a transfer has been presented the transfer may be refused, or otherwise if any of subclauses (a) to (e) are applicable, then the Holder shall be deemed to have given an irrevocable notice appointing each Director severally as the irrevocable attorney of that Holder for the purpose of effecting the surrender, redemption or sale of all of the Shares (other than Ordinary Shares) held by that Holder. The said Shares shall be surrendered, redeemed, or sold, at the option of the Board (provided that in respect of a sale the Board shall have complete and unfettered discretion as to the method, and price and terms, of sale) and any Director shall be authorised (as an attorney) to sign all share transfers and other documents necessary or desirable to effect such sale. Clauses 4.8 to 4.10 (inclusive) of this Constitution will apply with all necessary modifications to the exercise of any power of sale under this clause 8.5.

8.6 Transmission on Death of Shareholder

If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative if the deceased was not a joint Shareholder, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share. If the Personal Representative of a deceased Shareholder wishes to surrender the Shares held by him or her in that capacity, then the Company may redeem those Shares as set out in, and subject to the limitations in, clause 7.2(b).

8.7 Rights of Personal Representatives

A Personal Representative of a Shareholder:

- (a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to receive notices of and attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
- (b) notwithstanding clause 4.12, is entitled to be registered as Holder of those Shares, but such registration shall not operate as a release of any rights

(including any lien) to which the Company was entitled prior to registration of the Personal Representative.

8.8 Joint Personal Representatives

Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

8.9 Definition

For the purposes of clauses 8.6 to 8.8 "Personal Representative" means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed under that Act, a donee of an enduring power of attorney complying with that Act, or any person in the nature of such persons.

8.10 Application to Securities

The provisions contained in this clause 8 shall apply to all transfers of securities with any necessary modifications for securities which are not Shares.

8.11 Share Register

The Share Register may be divided into two or more registers kept in different places.

9 SHAREHOLDER VOTING

9.1 Entitlement to Vote:

- (a) Subject to any rights or restrictions for the time being attached to any Share or Class of Shares whether on issue at the date of adoption of this Constitution or issued subsequently (and which includes compliance with any applicable Stock supply requirements prescribed from time to time by the Board in accordance with their terms of issue), to subclause (b) of this clause, to clauses 10.14 and 12.6(h), and to the limitations described in clause 2.1 of the Schedule to this Constitution, every Shareholder present

at a meeting in person or by proxy or voting on a postal or electronic ballot shall:

- (i) on a vote by show of hands or by voice, have a right to one vote; and
 - (ii) on a poll, have a right to one vote for each Share held by that Shareholder.
- (b) Notwithstanding subclause (a):
- (i) the maximum number of votes that can be exercised by a Shareholder voting on a poll shall be the number of votes which can be cast by that Shareholder on the Maximum Holding applicable to that Class of Share;
 - (ii) Holders of Supplier Investment Shares have the right to vote only on a resolution, whether at a meeting or by postal or electronic ballot, for the purpose of electing Farmer Elected Directors under clause 11.2(a);
 - (iii) Holders of Redeemable Preference Shares 2002 have no right to vote on any resolution, except as provided in the terms of issue of those Shares.
- (c) The number or aggregate percentage of votes or voting rights attached to a Class of Shares and to persons holding Shares in that Class, in each case either on a particular resolution or generally, shall be as determined in, or in accordance with, the terms of issue of the relevant Share and the applicable provisions of this Constitution.

9.2 **Notice of Meetings**

Notwithstanding any other provision of this Constitution, all Shareholders shall be entitled to receive:

- (a) notice of all meetings of the Company;
- (b) a copy of the current annual report and financial statements; and
- (c) a copy of any notices to Shareholders issued by the Company.

The omission to send any of the aforesaid information to any Shareholder shall not invalidate the meeting.

9.3 Shareholder Resolutions

To be passed, a resolution of Shareholders (except where otherwise required by the Act or this Constitution) must be approved by:

- (a) in the case of an Ordinary Resolution and subject to the terms of issue of any Class of Shares, a majority of the votes of all Shares carrying voting rights and voting on that resolution provided such majority must include a majority of the votes exercisable by Current Suppliers, and voting, on the resolution;
- (b) in the case of a Special Resolution and subject to the terms of issue of any Class of Shares, 75 percent of the votes of all Shares carrying voting rights and voting on that resolution provided such majority must include a majority of the votes exercisable by Current Suppliers, and voting, on the resolution.

9.4 Voting Rights attached to Ordinary Shares

- (a) Subject to the following provisions of this clause 9.4, fully paid Ordinary Shares shall confer voting rights at meetings of the Company on the basis described in this Constitution.
- (b) In addition to Rebate Shares and Supplier Investment Shares, only Ordinary Shares held by Current Suppliers who have supplied the number of Production Equivalents comprised in the then Minimum Supply Requirement in each of the two 12 month periods ending with the last day of the month preceding the month in which notice of the meeting is issued by the Company (whether or not such supply is in accordance with the terms of any Marketing Rebate Supply Method) shall confer voting rights on the election, re-election or removal from office of Farmer Elected Directors under clause 12.
- (c) For the purposes of clause 9.4(b), in respect of any notice of meeting given prior to 31 December 2010, fully paid Ordinary Shares held by Current Suppliers shall confer voting rights in accordance with their terms of issue.
- (d) The Board's determination as to voting eligibility shall be conclusive and binding.
- (e) If the Company determines that a Holder of Ordinary Shares has not met the applicable eligibility criteria, no voting rights shall attach to that Holder's Ordinary Shares on the matters described in clause 9.4(b) until such time as the applicable criteria is so satisfied.
- (f) Partly paid Ordinary Shares shall not confer any voting rights for so long as they remain partly paid.

9.5 Proportionate Voting Entitlement

For so long as the Ordinary Shares remain on issue, then in accordance with their terms of issue, on any matter requiring a resolution of Shareholders (other than one to which clause 9.4(b) applies) the following provisions shall apply:

- (a) The fully paid Ordinary Shares and Rebate Shares entitled to vote and voting on any resolution of Shareholders which are, at the relevant date determined in accordance with section 125 of the Act and this Constitution, held by Qualifying Shareholders (in the case of Ordinary Shares) and held by Current Suppliers (in the case of Rebate Shares) shall, in aggregate and between them, be entitled to a number of votes equivalent to the greater of:
 - (i) one vote per fully paid Share; and
 - (ii) 60% of the total number of Votes able to be cast and voting on the relevant resolution.
- (b) The fully paid Ordinary Shares entitled to vote and voting on any resolution of Shareholders which are not, at the relevant date determined in accordance with section 125 of the Act and the Constitution, held by Qualifying Shareholders shall, in aggregate and between them, be entitled to a number of votes equivalent to the lesser of:
 - (i) one vote per fully paid Share; and
 - (ii) 40% of the total number of Votes able to be cast and voting on the relevant resolution.
- (c) If the actual number of voting rights exercised by Qualifying Shareholders and Holders of Rebate Shares who are Current Suppliers on a resolution to which clause 9.5(a) applies is equal to or exceeds 60% of the total number of voting rights validly exercised on that resolution, no adjustment to the voting rights attaching to the Ordinary Shares held by the Qualifying Shareholders shall be made.
- (d) If the actual number of voting rights exercised by Qualifying Shareholders and Holders of Rebate Shares who are Current Suppliers on a resolution to which clause 9.5(a) applies is less than 60% of the total number of voting rights validly exercised on that resolution, the voting rights attaching to each Ordinary Share held by the Qualifying Shareholders shall be increased for the purposes of that resolution (and the voting rights attaching to each Ordinary Share held by non-Qualifying Shareholders in respect of which a voting right is exercised shall be correspondingly decreased for the purposes of the relevant resolution), so that the voting rights exercised by the Qualifying Shareholders and the Holders of Rebate Shares who are

Current Suppliers shall, in aggregate and between them, equate to 60% of the total number of voting rights so exercised on the relevant resolution.

- (e) The Board's determination as to voting rights shall be conclusive and binding.
- (f) If the Company issues any other Shares that are entitled to vote in the circumstances described in clause 9.5(a), then the provisions of this clause will be applied in such manner as is necessary to give effect to, and is consistent with, the voting entitlements of the relevant new Shares.

9.6 **No Current Suppliers**

If, at any relevant record date or the date of any general meeting, there are no Current Suppliers, or no Current Suppliers whose Ordinary Shares are entitled to vote on the relevant resolution, all fully paid Ordinary Shares on issue shall be entitled to vote on a one share one vote basis without regard to clauses 9.4(a) to 9.4(e) and 9.5(a) to 9.5(d), but subject to any applicable aggregate voting restriction or shareholding cap imposed by this Constitution.

10 **SHAREHOLDER MEETINGS**

10.1 **First Schedule to Act Modified**

The provisions of the First Schedule to the Act shall be read subject to the provisions appearing in this Section of this Constitution.

10.2 **Chairperson**

- (a) If the chairperson of the Board is present at a meeting of Shareholders, he or she shall, subject to subclause (c), chair the meeting.
- (b) If the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present shall elect one of their number to be chairperson of the meeting.
- (c) If the chairperson is disqualified from voting on a particular matter at any meeting, the deputy chairperson (if any) or some other Director appointed by the remaining Directors shall, unless also disqualified, chair the meeting for consideration of the particular matter.

10.3 Annual Report

Subject to applicable law, all Shareholders are deemed to have agreed that the annual report of the Company is not required to comply with Section 211(1)(a) and (e) to (j) of the Act.

10.4 Notice of Meetings

- (a) Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of and to vote at the meeting and to every Director and auditor of the Company not less than ten Working Days before the meeting.
- (b) The notice must state:
 - (i) The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
 - (ii) The text of any Special Resolution to be submitted to the meeting.
- (c) Except as provided in subclauses (g) and (h) of this clause, no other business than that stated in the notice of meeting shall be determined at the meeting.
- (d) An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- (e) The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- (f) If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.
- (g) The chairperson of a meeting of Shareholders must allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution shall be binding on the Board.
- (h) A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The

provisions of clause 9 of the First Schedule to the Act apply to any notice given pursuant to this subclause (h) but unless the Board specifically directs that Shareholders will be entitled to vote on any such matter, no resolution in relation to such matter shall be binding on the Board.

10.5 **Methods of Holding Meetings**

A meeting of all Shareholders entitled to be given notice of the meeting and of which proper notice has been given may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being present together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting.

10.6 **Meetings of Shareholders**

- (a) The Board must call an annual meeting of Shareholders to be held:
 - (i) not later than 15 months after the date of the previous annual meeting of Shareholders; and
 - (ii) not later than 6 months after the balance date of the Company.
- (b) The Company must hold the meeting on the date on which it is called by the Board to be held.
- (c) A special meeting of Shareholders entitled to vote on an issue:
 - (i) may be called at any time by the Board; and
 - (ii) must be called by the Board on the written request of Shareholders holding Shares carrying together not less than five percent of the voting rights entitled to be exercised on the issue.

10.7 **Quorum**

- (a) Subject to clause 10.7(c), no business may be transacted at a meeting of Shareholders or any Class of Shareholders if a quorum is not present.
- (b) A quorum is present at a meeting of Shareholders or any Class of Shareholders if seven Shareholders entitled to vote at that meeting are present in person or by proxy.

- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
 - (i) in the case of a meeting called under section 121(b) of the Act, the meeting is dissolved; or
 - (ii) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Board may appoint and those Shareholders present at the meeting following the meeting which is adjourned shall be a quorum.

10.8 Voting

- (a) In the case of a meeting of Shareholders held under clause 10.5(a) unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands,but without limiting postal or electronic voting when permitted by the Board under clause 10.10.
- (b) In the case of a meeting of Shareholders held under clause 10.5(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders entitled to vote signifying individually their assent or dissent by voice.
- (c) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 10.8(d).
- (d) At a meeting of Shareholders a poll may be demanded by:
 - (i) the chairperson of the meeting;
 - (ii) not less than five Shareholders having the right to vote at the meeting;
 - (iii) a Shareholder or Shareholders representing not less than ten percent of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (iv) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the

aggregate amount paid up is not less than 10 percent of the total amount paid up on all Shares that confer that right.

- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy, entitled to vote and voting.
- (g) The chairperson of a Shareholders' meeting shall not be entitled to a second or casting vote if there is an equality of votes on a show of hands or on a poll.
- (h) For the purposes of this clause the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.
- (i) All voting at meetings of Shareholders shall be subject to the provisions and restrictions contained in clauses 9.1, 9.3, 10.14 and 12.6(h).

10.9 Proxies

- (a) A Shareholder entitled to vote may exercise the right to vote either by being present in person or by proxy.
- (b) A proxy for a Shareholder entitled to vote at a meeting of Shareholders is entitled to attend and be heard at the meeting as if the proxy were the Shareholder.
- (c) A proxy must be appointed by notice in writing signed by the Shareholder or the Shareholder's attorney duly authorised or, if the appointor is a corporation, signed by a duly authorised officer or an attorney duly authorised pursuant to section 181 of the Act. Where there are joint Holders of Shares entitled to vote the proxy must be signed by a majority of the joint owners. A proxy need not be a Shareholder, unless otherwise specified in the terms of issue of any Shares.
- (d) A proxy may be appointed generally or for a specified period or specified meeting. An instrument appointing a proxy shall be in such form as the Board shall determine and shall be effective if a copy of the notice of appointment is received by the Company at an address and by a time as may be determined by the Board and specified for that purpose in the notice convening the meeting. If the Board does not determine the form of proxy then the proxy shall be in the following form or a form as near thereto as circumstances admit and shall (so far as the subject matter and

form of the resolution reasonably permits) enable the Shareholder to instruct the proxy as to the way in which a vote on a resolution is to be cast by the Shareholder and the Company shall not issue any proxy form with a proxy named therein either by name or by reference to an office which that person may hold:

SILVER FERN FARMS LIMITED

PROXY FORM

I/We

of

being a Shareholder/Shareholders of Silver Fern Farms Limited hereby appoint

of

or failing that, _____ of _____, as my/our proxy to vote for me/us on my/our behalf at the (annual or special as the case may be) meeting of the Company to be held on the _____ day of _____ 20[] , and at any adjournment thereof.

SIGNED this _____ day of _____ 20[]

Any proxy given by an attorney must be under the hand of that attorney and a representative of a corporation must be authorised by that corporation. In both instances a copy of the power of attorney appointing that attorney or of the resolution appointing such representative shall be deposited with the Company at least 48 hours before the start of the meeting to which such proxy applies.

Signature of Shareholder _____

*This form is to be used *in favour of/*against the resolution

*Unless otherwise instructed the proxy will vote as the proxy thinks fit.

*Strike out whichever is not desired.

Where the resolution does not reasonably permit the Shareholder to instruct the proxy as to the way in which a vote on a resolution is to be cast the following form of proxy may be used or as near thereto as circumstances admit.

SILVER FERN FARMS LIMITED**PROXY FORM**

I/We

Of

being a Shareholder/Shareholders of Silver Fern Farms Limited hereby
appoint

of

or failing that

of

as my/our proxy to vote for me/us on my/our behalf at the (annual or
special, as the case may be) meeting of the Company to be held on the
day of 20[] ,and at any adjournment thereof.

SIGNED this day of 20[]

Any proxy given by an attorney must be under the hand of that attorney
and a representative of a corporation must be authorised by that
corporation. In both instances a copy of the power of attorney appointing
that attorney or of the resolution appointing such representative shall be
deposited with the Company at least 48 hours before the meeting to which
such proxy applies.

Signature of Shareholder _____

- (e) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the Shares in respect of which the proxy is given if no intimation in writing of such death, insanity, revocation or transfer as aforesaid has been received by the Company at the registered office at least 48 hours before the start of the meeting or adjourned meeting at which the proxy is used.

10.10 Postal or Electronic Votes

The Board may at its discretion determine that postal or electronic voting be permitted for any meeting and, if it does so, the Board shall determine the procedure for casting such postal or electronic votes.

10.11 Minutes

- (a) The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- (b) Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

10.12 **Corporation may act by Representative**

A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were an individual, and references in this Constitution to a Shareholder being present in person shall mean and include a representative appointed pursuant to this clause that is present.

10.13 **Votes of Joint Holders**

Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders unless the joint holders unanimously agree to some other person so voting and give written notice to the Company of that agreement.

10.14 **Loss of Voting Right if Moneys Unpaid**

If a sum due and payable to the Company in respect of a Share has not been paid, or any other moneys are due and payable by a Shareholder to the Company, then the Shares held by that Shareholder may not be voted at a Shareholder's meeting.

10.15 **Procedure**

The chairperson of the meeting shall regulate the procedure at any meeting of Shareholders.

10.16 **Interest Group Meetings**

If pursuant to the provisions of the Act a separate meeting of any group of Shareholders who constitute an Interest Group is required to be held or is otherwise called by the Board then such meeting shall be held in the same manner as if it were a meeting of all the Shareholders.

10.17 **Shareholders entitled to exercise rights and receive benefits**

Subject to clause 9.1, the Shareholders who are entitled to exercise any of the rights or receive any of the benefits under the Act or this Constitution, including the right to attend and the right to vote at meetings of Shareholders, are:

- (a) if the Board fixes a date for the purpose, those Shareholders who have complied with any applicable supply requirements prescribed from time to time by the Board on that date; and

- (b) if the Board does not fix a date for the purpose, those Shareholders who have complied with any applicable supply requirements prescribed from time to time by the Board on the day on which the Board or the Shareholders pass the resolution concerned.

11 APPOINTMENT OF DIRECTORS

The provisions of Section 153(2) of the Act shall not apply.

11.1 Maximum / Minimum Number of Directors

The number of Directors shall not be more than eight nor less than six.

11.2 Appointment of Directors

The Directors shall comprise:

- (a) no more than five Farmer Elected Directors; and
- (b) no more than three Board Appointed Directors.

11.3 Qualification for Appointment as Director

No person shall be qualified to act, or be elected, or continue in office as a Director if that person is an employee of the Company or any Subsidiary.

11.4 Vacation of Office as Director

The office of Director shall be vacated if the Director:

- (a) ceases to be qualified to hold office pursuant to clause 11.3; or
- (b) becomes disqualified from being a Director by reason of Section 151 of the Act; or
- (c) becomes of unsound mind; or
- (d) resigns his or her office pursuant to clause 11.5; or
- (e) being a Board Appointed Director, is removed from office in accordance with clause 11.6;
- (f) being a Farmer Elected Director, is removed from office in accordance with clause 12.9 or, if retiring by rotation in accordance with clause 12.1, is not re-elected by Shareholders; or

- (g) supplies Stock to a competitor of the Company other than in circumstances determined by the Board to be justified for the purposes of this subclause (g).

11.5 Resignation of Director

A Director may resign from office at any time by giving the Company a notice in writing of his or her resignation or by announcing the same at a meeting of the Board or by sending a resignation by facsimile or other electronic means with verification in writing. A resignation in accordance with this clause shall take effect as from the time of receipt of the notice at the registered office of the Company or the announcement at the Board meeting, as the case may be or from such later time as may be specified in the notice or announcement.

11.6 Appointment and Removal of Board Appointed Directors

- (a) Subject to clause 11.3, the Board may, by notice in writing to the Company signed by a majority of the Directors in office at the date the notice is given, appoint, for such period as the Board thinks fit, any person or persons to be a Board Appointed Director or Directors to hold office and may from time to time remove from office any person or persons so appointed and appoint another person or persons in their place, but so that the total number of Board Appointed Directors shall not at any time exceed three.
- (b) No Board Appointed Director may be removed from office by Shareholders.

11.7 Directors' Interest in Transactions

Subject to clause 11.8, a Director who is interested in a transaction entered into, or to be entered into, by the Company:

- (a) shall declare that interest to the Board immediately the Director becomes aware of the interest;
- (b) may vote on a matter relating to the transaction unless ineligible under clause 14.7 to do so;
- (c) may attend a meeting of Directors at which a matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (d) may sign a document relating to the transaction on behalf of the Company; and
- (e) may do any other thing in his or her capacity as a Director in relation to the transaction.

11.8 No interest if Matter Affects All Suppliers

Notwithstanding clause 11.7, where a Director is a Supplier and the matter before the Board affects all Suppliers and/or Current Suppliers and not only that particular Director as a Supplier then that Director shall not be required to declare an interest.

11.9 Director May Sign Documents Notwithstanding Interest

A Director who is interested in a transaction is not precluded by that interest from:

- (a) signing a document relating to that transaction on behalf of the Company;
or
- (b) doing anything else in relation to the transaction,

and subject to declaring his or her interest in accordance with clause 11.7(a) and subject to clause 14.7, may act as if he she were not interested in the transaction.

11.10 Initial Directors

On the adoption of this Constitution, the Directors shall be Richard John Somerville, Antony John Balfour and Trevor Burt (all of whom will be deemed to have been appointed in accordance with clause 11.6) and Eoin Reay Hamilton Garden, Robert James Hewett, David Scott Ferraby, Angus Collis Mabin and Peter Herstatt Ulrich (all of whom will be deemed to have been elected in accordance with clause 12).

12 ROTATION OF FARMER ELECTED DIRECTORS

12.1 Retirement by Rotation

- (a) One third or, if the number of Farmer Elected Directors holding office is not divisible by three, then the nearest to one third of the Farmer Elected Directors shall retire at each annual meeting, provided that if the application of this formula would result in any director being required to retire by rotation any earlier than three years after his or her election or last re-election, then the number to retire at the relevant annual meeting will be reduced to exclude any such person.
- (b) Notwithstanding subclause (a), the Farmer Elected Directors holding office immediately following the adoption of this Constitution shall not be required to retire by rotation at the 2009 annual meeting.

- (c) The Farmer Elected Director(s) to retire at any annual meeting shall be those who have been longest in office since his or her appointment or last re-election (whichever is the later) but as between persons who become Farmer Elected Directors or were last re-elected on the same day, the one to retire shall (unless they otherwise agree amongst themselves) be determined by lot.
- (d) A retiring Farmer Elected Director shall be eligible for re-election.

12.2 Election of Farmer Elected Directors - Nomination Procedures

The closing date for the nomination of Farmer Elected Directors (excluding persons who are retiring by rotation and are eligible for re-election) shall be 30 Working Days prior to the proposed date of the annual meeting of the Company. No person other than a Director retiring by rotation shall, unless nominated by the Directors, be eligible for election as a Farmer Elected Director at any annual meeting unless at some time on or before the nomination closing date there has been received at the registered office notice in writing nominating that person for election signed by at least two Current Suppliers who meet any criteria set by the Board for their shareholding to qualify for voting rights and also notice in writing signed by that person of his or her willingness to be elected and of his or her eligibility under clause 11.3. In notifying Shareholders of any nomination received, the Board may advise Shareholders of such details concerning the nominee's trading history with the Company, and such other information, as the Board determines may be relevant in connection with the nominee's prospective election, suitability and qualification for holding office.

12.3 Existing Farmer Elected Directors Eligible

An existing Farmer Elected Director retiring by rotation shall:

- (a) be eligible for re-election and shall not require nomination pursuant to clause 12.2; and
- (b) notify the Board of any intention not to seek re-election not less than four weeks prior to the nomination closing date determined under clause 12.2.

12.4 No Election if Vacancies Equal Nominations

If the nominations for the office of a Farmer Elected Director do not exceed the number required, those nominated shall be declared elected and shall take office at the dissolution or adjournment of the annual meeting of the Company following their nomination and the chairperson shall announce their election at the meeting.

12.5 Election Procedures if Nominations Exceed Vacancies

If the nominations for the office of a Farmer Elected Director exceed the number of Directors required, the following procedures shall apply:

- (a) the election shall be carried out by ballot in accordance with the procedures contained in this clause and in clause 12.6, subject to any alterations to those procedures as may be determined by the Board from time to time;
- (b) voting papers shall be in such form as may be determined by the Board provided that the persons nominated for office shall be shown on the voting papers in alphabetical order and existing Farmer Elected Directors seeking re-election identified as such;
- (c) votes may be cast by such method and in accordance with such procedures as the Board may determine, including by electronic (including internet, email and facsimile) voting procedures.

12.6 Procedures for Voting on Farmer Elected Directors

In carrying out voting for the election of a Farmer Elected Director the following procedures shall apply:

- (a) not more than 30 Working Days before the annual meeting of the Company the voting papers shall be posted to every Current Supplier entitled to vote and to every Holder of Supplier Investment Shares, and of other Shares conferring the right to vote on the election of Farmer Elected Directors, to the address of each such person entered in the Share Register;
- (b) the non-receipt of any voting papers by a person entitled to vote on the election of Farmer Elected Directors, or the failure to post such voting papers to a Current Supplier, shall not invalidate the election;
- (c) the Board shall appoint a person to be the returning officer for the purposes of the election (the "**returning officer**") and such person shall issue the voting papers to all persons entitled to vote on that election and shall carry out the further duties specified in this clause. A certificate by the returning officer that voting papers have been duly posted shall be accepted as conclusive proof that they were so posted;
- (d) in sending out all voting papers to persons entitled to vote, the Board may include with those papers such information relating to each candidate as the Board considers appropriate, including any reasonable and succinct information supplied by a candidate;

- (e) if any person entitled to vote loses or destroys a voting paper that person shall be entitled to a replacement voting paper. If any person entitled to vote returns both the original voting paper and a substitute voting paper then both such votes shall be deemed to be invalid. The returning officer may mark voting papers so that they can be clearly distinguished as between original voting papers and substituted voting papers;
- (f) voting papers shall designate the manner in which the votes are to be cast. If a person votes for more than the number of Farmer Elected Directors, or defaces the voting paper, the voting paper shall be deemed to be invalid and shall not be counted;
- (g) the Board shall appoint the auditors of the Company, or failing the auditors, two scrutineers, to count the votes and report to the chairperson the result of voting. Ten Working Days after all votes have been counted the auditors or scrutineers shall be entitled to destroy all voting papers;
- (h) without limiting clause 10.14, any person who is in default in payment of any call or other sum payable by that person to the Company shall not be entitled to vote. A certificate by a Director that a person has failed to pay any moneys due to the Company shall be conclusive evidence of that fact.

12.7 Filling of Vacancies

If at any time the number of Farmer Elected Directors holding office is less than the maximum number specified in clause 11.2(a), the vacancy shall, as soon as practicable, be filled by the appointment of a replacement by the Board. Any such replacement shall vacate office at the conclusion of the annual meeting following his or her appointment unless elected to office by Shareholders entitled to vote on the election of Farmer Elected Directors at that meeting. Any such person shall not be taken into account in determining the number or identity of Farmer Elected Directors retiring by rotation at the annual meeting.

12.8 Directors May Continue to Act

Notwithstanding any other provision of this Constitution, the continuing Directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the number fixed by clause 11.1 as the minimum number of Directors, the continuing Directors may act for the purpose of facilitating the increase of the number of Directors to that number in accordance with clause 12.7 but for no other purposes.

12.9 Removal of Farmer Elected Directors

Farmer Elected Directors may be removed from office by Ordinary Resolution of Shareholders.

13 **BOARD REMUNERATION**

13.1 **Board Remuneration**

Prior to ascertaining the amount of Directors' remuneration the Board may obtain the opinion of independently qualified persons as to the appropriate rate of remuneration payable to directors of companies with a similar level of assets and revenue to the Company.

If the Board has obtained an opinion under this clause 13.1, after taking into account that opinion or otherwise on the decision of the Board as to what is fair and reasonable remuneration, the Board shall determine its own remuneration in accordance with the provisions of the Act and ensure that such remuneration is fair to the Company.

13.2 **Expenses Payable to Directors**

The Directors shall also be entitled to receive:

- (a) any allowance for travel, disbursements and payments incurred by the Directors acting in the interests of the Company and any other expenses incurred or likely to be incurred in attendances at meetings of the Board and of the Company and when in any other manner whatsoever engaged in the business or affairs of the Company;
- (b) any additional remuneration out of the funds of the Company by a fixed sum or at a fixed rate to any Director or Directors forming a committee of the Board, rendering any special services in going abroad or otherwise for any of the purposes of or in the interests of the Company, or for undertaking any work additional to that required of directors of a company similar to this and without any such award each Director shall be entitled to reasonable expenses as set out in subclause (a) for or in connection with any travel undertaken by that Director on the Company's business,

which amounts may be paid to the Directors without any further authority.

13.3 **Retirement Gratuities May be Paid**

The Board may also pay or make arrangements for the payment to any past, present or future Director on or in respect of his or her retirement from such office, or may pay or make arrangements for the payment to the surviving spouse or dependants of any such Director on or in respect of his or her death, a lump sum or pension, provided that a lump sum so paid either in cash or as a base for a pension shall not exceed the sum of all emoluments of that Director as such from the Company in the immediately previous three years during which he or she was a Director. The amounts so paid or payable by the Company to or on behalf of a Director shall be in addition to any normal amounts or benefits paid or

payable to such Director from any superannuation scheme established by the Company or any Subsidiary and the limitations contained therein shall not apply to any payments of pension specifically authorised in the case of a particular Director by an Ordinary Resolution passed at a meeting of the Shareholders.

13.4 **Director May Represent Company on Board of Another Entity**

A Director may be or become a director of, or otherwise interested, in any company or other entity promoted by the Company, or in which the Company may be interested as shareholder, or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by that person as director or officer of, or from such person's interest in, any such other company or other entity, unless the Company otherwise directs.

14 **PROCEEDINGS OF THE BOARD**

14.1 **Third Schedule not to apply**

The Third Schedule to the Act shall not apply and the following provisions shall govern the proceedings of the Board.

14.2 **Meetings and Quorum**

- (a) The Board may meet together for the dispatch of business, adjourn, or otherwise regulate its meetings and proceedings as the Directors may think fit.
- (b) A quorum for meetings is five Directors, of whom at least three are Farmer Elected Directors and at least one is a Board Appointed Director.
- (c) If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting may, at the discretion of the chairperson or a majority of the Directors present, be adjourned for at least 48 hours and notice of the day, time and place for such adjourned meeting shall be given in writing to all Directors at least 36 hours prior to the time of such adjourned meeting.
- (d) If at a meeting adjourned under subclause (b), a quorum is not present within 30 minutes after the time appointed for the meeting the Directors present, provided there are three or more, shall be a quorum.

14.3 Procedure

Until otherwise agreed unanimously by the Board the following procedures shall apply to all meetings of the Board:

- (a) if a Director is absent from New Zealand, or is in New Zealand and cannot attend the meeting, then every reasonable attempt shall be made to contact that Director and include that Director in the meeting by telephone, audio, audio visual or other means;
- (b) at least 36 hours' notice shall be given of the proposed Board meeting;
- (c) if at least 75 percent of the Directors are present or otherwise available at the meeting and a Director has not been contacted then the meeting may waive the notice period in subclause (b);
- (d) a Director who has leave of absence and who has not given a contact address or number, or has indicated that he or she will not be available for meetings of Directors, shall not be taken into account in respect of the foregoing procedures.

14.4 Notice

- (a) Every Director shall be given notice of a meeting by letter, telephone, facsimile, electronic mail or other audio visual or electronic means to the address provided by the Director for notices but it shall not be necessary to give notice of a meeting of the Board to any Director for the time being who has not given notice of an address or other electronic number at which that Director can be contacted and the Company has made all reasonable endeavours to give notice of that meeting to that Director in accordance with clause 14.3.
- (b) Notices of meeting shall be given in accordance with clauses 14.3 and 14.4 and the failure to give or non receipt of such a notice to or by any Director shall not invalidate any meeting of the Board.
- (c) A meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution or the Act for the time being vested in or exercisable by the Board generally.

14.5 Non Physical Meeting

- (a) For the purposes of this Constitution the contemporaneous linking together by simultaneous telephone, audio, audio visual or other electronic means of a number of Directors not less than the quorum, together with the employee of the Company appointed by the Board to take minutes (the

"**minute secretary**"), whether or not any one or more of the Board is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings, so long as the following conditions are met:

- (i) all Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of such a meeting at the address provided to the Company for the giving of notices and to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means;
 - (ii) each Director taking part in the meeting and the minute secretary must be able to hear each of the other persons taking part, at the commencement of the meeting;
 - (iii) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part;
 - (iv) provided the Board has taken all reasonable steps to contact all Directors as set out in clause 14.3 the failure to contact a Director shall not invalidate a meeting called pursuant to this clause and those notified (being more than half of the Directors) shall be deemed a quorum.
- (b) A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting unless he or she has previously obtained such consent.
- (c) A minute of the proceedings at such meeting shall be sufficient evidence of the proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting and by the minute secretary.
- (d) Nothing in this clause 14.5 shall limit the provisions of clause 14.7.

14.6 **Calling of Meeting**

The chairperson of the Board, or any two Directors, may at any time summon a meeting of the Board.

14.7 **Voting**

- (a) Questions arising at any meeting of the Board shall be determined in accordance with clause 14.7(c) by vote of the Directors present in person. On any such vote each Director shall have one vote.
- (b) In the event of an equality of votes on any resolution, the chairperson shall not be entitled to a second or casting vote.
- (c) To be passed, a resolution of the Board must be approved by the affirmative votes of a majority of the Directors present in person and voting at the meeting.

14.8 **Chairperson**

- (a) The Board:
 - (i) shall from time to time appoint one of the Farmer Elected Directors as a chairperson and determine the period for which he or she is to hold office and may from time to time re-appoint that person as chairperson; and
 - (ii) may from time to time appoint a deputy chairperson.
- (b) The chairperson shall preside at all meetings of the Board, but if the chairperson is not present within 15 minutes after the time appointed for holding the meeting, any deputy chairperson appointed shall preside at such meeting. In the absence of the chairperson, and of any deputy chairperson, the Directors present may choose one of their number to be chairperson of the meeting, and the Director so chosen shall preside at such meeting accordingly.

14.9 **Committees of Board**

- (a) Subject to clause 14.9(b), the Board may delegate any of its powers to committees consisting of such member or members of the Board as the Board thinks fit and may from time to time cancel such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any regulation that may be imposed upon it by the Board. Save as aforesaid, the meetings and proceedings of a committee consisting of more than two Directors shall be governed by the provisions of this Constitution regulating the proceedings and meetings of the Board.
- (b) The Board, when establishing a committee, and every committee in conducting its proceedings, shall have due regard to the provisions of this Constitution regulating the appointment, powers and proceedings of Directors, in order that the requirements of this Constitution in relation to

the Directors and the Board are not circumvented by appointments made to, or the actions of, any committee.

14.10 **Defects**

All acts done by any meeting of the Board or a committee of the Board or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

14.11 **Resolution in Writing**

A resolution in writing signed or assented to by all the Directors for the time being entitled to receive notice of a meeting of the Board and vote on the resolution (provided those Directors would be able, having regard to the majority required by the applicable provisions of clause 14.7(c), to pass that resolution at a meeting of the Board) shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted. Any such resolution may consist of several documents in like form (including facsimile, email or other similar means of communication) each signed by one or more Directors.

14.12 **Minutes**

The Board shall cause minutes of its meetings to be made for the purpose of recording:

- (a) the names of the Directors present at each meeting of the Board and of any committee of the Board; and
- (b) all resolutions and proceedings at all meetings of the Company and of the Board and of committees of the Board.

All such minutes shall be submitted to the Board for approval. Any such minutes of any meeting of the Board or of any committee if purporting to be signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.

15 **INDEMNITIES AND INSURANCE**

The Company may in accordance with and as permitted by the Act:

- (a) enter into indemnities for Directors and employees of the Company and any related company; and
- (b) effect insurance for a director of the Company and any related company,

and the Board may determine the terms and conditions (including amounts) for any such indemnity and insurance.

16 MANAGEMENT OF THE COMPANY

16.1 Board to manage Company

The Company's business and affairs must be managed by, and under the direction or supervision of, the Board, except to the extent that the Act or this Constitution provides otherwise.

16.2 Board has powers necessary to manage Company

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this Constitution provides otherwise.

17 MAJOR TRANSACTIONS AND ASSET ACQUISITION AND DISPOSALS

The Company must not enter into a major transaction unless the transaction is:

- (a) approved by a Special Resolution of Shareholders; or
- (b) contingent on approval by a Special Resolution of Shareholders.

18 LOST CERTIFICATES

18.1 Lost Certificates replaced

If any Share certificates are issued then if a Share certificate is defaced, lost or destroyed it may be renewed on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company of investigating evidence as the Board may in each case think fit.

19 CALLS ON SHARES

19.1 Board May Make Calls

The Board may from time to time make calls upon the Shareholders in respect of any money which is unpaid on their Shares and which is not by the terms of issue made payable at a specified time or times. Subject to receiving at least 14 days' notice specifying the time or times and place of payment each Shareholder shall pay to the Company at the time or times and place so specified the amount called on his or her Shares provided that a Shareholder may make payment without first receiving such notice or prior to the expiry of any such notice. A call may be revoked or postponed as the Board may determine.

19.2 **No Amounts Payable in Advance of Calls**

The Board shall determine the amounts payable on any Shares and the manner in which such amounts are payable. Unless approved by the Board and permitted by their terms of issue, no amounts payable on Shares shall be paid in advance. All calls or payments otherwise due on a Share shall be deemed to have been made when the Board passes a resolution authorising the call or payment.

19.3 **Joint Liability for Calls**

The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.

19.4 **Interest on Unpaid Calls**

If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate as the Board may determine, but the Board shall be at liberty to waive payment of that interest wholly or in part.

19.5 **Calls Payable Based on Terms of Issue**

Any sum which by the terms of issue of a Share is payable on allotment or at any specified time shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

19.6 **Resolution Prima Facie Evidence of Call**

On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the Shareholder sued is entered in the Share Register as the holder or one of the holders of the Shares in respect of which such debt accrued, that the resolution making the call is duly recorded in the minute book and that notice of such call was duly given to the Shareholder sued in pursuance of this Constitution. It shall not be necessary to prove the appointment or qualification of the Board who made such call nor any other matter whatsoever and the proof of the matters aforesaid shall be conclusive evidence of the debt.

19.7 **Board May Differentiate Calls**

The Board may on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

19.8 **Board May Accept Advance Calls**

The Board may if it thinks fit receive from any Shareholder willing to advance the same all or any part of the money uncalled and unpaid upon any Shares held by him or her and may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the Shareholder paying the sum in advance provided that no Shareholder shall be entitled as of right to any interest on any money so paid in advance and the Board may decline to pay any interest. The Board may at any time repay the amount so advanced upon giving to the Shareholder one month's notice in writing.

20 **FORFEITURE AND LIEN**

20.1 **Board May Give Notice of Default for Call**

If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the Shareholder requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment. The Board shall not be required to give such a notice where the terms of issue of the applicable Shares provide for their own payment and forfeiture regime.

20.2 **Notice May Require Payment by Specified Date**

The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.

20.3 **Forfeiture if Payment Not Made**

If the requirements of any such notice as aforesaid are not complied with or if the terms of issue of the applicable Shares provide for a forfeiture of those Shares, any Share in respect of which the notice has been given or the terms of issue apply, may at any time thereafter before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture.

20.4 **Notice of Forfeiture to be Given**

When any Share has been so forfeited, notice of the resolution shall be given to the Shareholder in whose name it stood immediately prior to the forfeiture, and

an entry of the forfeiture, with the date thereof, shall forthwith be made in the Share Register, and the share certificate of any Shares so forfeited shall be immediately cancelled by the Company. The Shareholder in whose name such cancelled share stood immediately prior to such cancellation shall return the share certificate (if any) for such share so forfeited to the Company within 14 days of receiving notice of such resolution as aforesaid.

20.5 Forfeited Share Surrendered

A forfeited share may be surrendered or redeemed at the amount paid up on those Shares and at any time before the surrender the forfeiture may be cancelled on such terms as the Board thinks fit.

20.6 Shareholder Ceases to Have Rights if Shares Forfeited

A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the Shares but the Shareholder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Shares.

20.7 Forfeiture if No Payment by Date Specified at Issue

The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

20.8 Company Has Paramount Lien

The Company shall have a first and paramount lien upon all the Shares registered in the name of each Shareholder, whether solely or jointly with others, and upon the proceeds of sale thereof for unpaid calls and instalments in respect of such Shares and any other payments at law required in respect of such Shares and for all debts, obligations, engagements and liabilities of such Shareholder, whether absolute or contingent, and whether solely or jointly with any other person and whether payable or to be performed or discharged presently or in future, to or with the Company, or to or with any Subsidiary or whether or not the date for payment, fulfilment or discharge shall have arrived or not. No equitable interest in any Share shall be created except upon the footing and condition that the provisions of this Constitution are to have full effect and such lien shall extend to all Distributions, bonuses, allowances, and other payments which may be declared in respect of such Shares and to all moneys due to that Shareholder for any products supplied or services rendered by the Shareholder to the Company. For the purpose of giving better effect to this clause, each Shareholder irrevocably appoints the Company and each officer of the Company severally the

attorney of the Shareholder authorising the Company to complete an assignment to the Company of any moneys owing by that Shareholder to any Subsidiary or associate company and the Shareholder agrees to ratify and confirm any act carried out by the Company in that behalf.

20.9 Company May Sell Shares on Which Has Lien

The Company may sell in such manner as the Board thinks fit any Shares on which the Company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share or the person entitled thereto by reason of the death or bankruptcy of the Shareholder.

20.10 Proceeds Applied to Satisfaction of Calls

The net proceeds of the sale of any forfeited share which is sold within 12 months of the date of forfeiture or of Shares sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls or instalments, interest thereon and expenses and other moneys (if any) in respect whereof the lien existed. The residue, if any, shall be paid to the former holder of the Share or, if applicable, to the Personal Representative or trustee in bankruptcy of that person.

20.11 Certificate of Director Conclusive

A certificate signed by two Directors that the power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

20.12 Board May Authorise Transfer

For giving effect to any such sale after forfeiture or for enforcing a lien, the Board may authorise some person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and shall not be bound to see to the application of the purchase money nor shall their title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for forfeited Shares is not delivered up to the Company, the Company may issue a new certificate distinguishing it as the Company thinks fit from the certificate not delivered up.

21 **DIVIDENDS, RESERVES AND SHARES**

21.1 **Board Determines Profits for Distribution**

- (a) The Board shall determine what profits are available for distribution and the basis for distributing those profits. Profits may be distributed, at the unfettered discretion of the Board, by way of:
- (i) returns payable on Pools in which Suppliers or Current Suppliers are participating; or
 - (ii) a Marketing Rebate payable according to the volumes and/or values of business transacted by Suppliers and Current Suppliers; or
 - (iii) a dividend; or
 - (iv) in such other manner as the Board thinks fit,
- in such proportions and in such manner, or such combinations, as the Board may determine from time to time.
- (b) A Distribution may be made by:
- (i) an issue of Shares of such Class and at such issue price as is determined by the Board; or
 - (ii) by capitalising any part of the amount into such Shares for issue to Shareholders of such Classes as are determined by the Board; or
 - (iii) in cash; or
 - (iv) as otherwise determined by the Board.
- (c) In determining the distribution of profits, the Board may from time to time determine the policy for the distribution of Marketing Rebates by reference to the number or value of, the volume of, or the profits derived from, transactions by Shareholders with the Company during such period as is determined by the Board.

21.2 **Board Discretion to Determine Distributions, Marketing Rebate Payments and Apply Payments**

Without otherwise restricting the discretion of the Board, the Board is empowered to:

- (a) determine whether profits should be distributed by Marketing Rebate, dividend or otherwise;
- (b) pay Marketing Rebates to which a Shareholder would otherwise be entitled, either by a dividend or by a distribution of bonus Shares;
- (c) retain and capitalise any Distributions by way of Marketing Rebates or otherwise into Shares and distribute those Shares in satisfaction of that Rebate or other payment;
- (d) if any Shareholder entitled to a Marketing Rebate does not hold a Minimum Holding, apply that Marketing Rebate in paying up Shares until such time as that Minimum Holding is held by that Shareholder;
- (e) retain any Marketing Rebates or other Distributions payable to Shareholders who cannot be located.

21.3 **Board Can Retain Reserves**

The Board may, before authorising any dividend or paying out any Marketing Rebates, set aside out of the profits of the Company such amounts as it determines as a reserve or reserves for such purposes as the Board deems appropriate.

21.4 **Board Can Distribute Profits as Dividends, Shares or Otherwise**

Without limiting the rights of the Board, but subject to any particular rights attached to any Share entitling the Holder to a particular Distribution, the Board may from time to time:

- (a) pay and distribute dividends, Marketing Rebates and other Distributions to such Shareholders, or Current Suppliers, in such proportions and amounts, as the Board determines including (without limitation) by reference to minimum shareholding levels and/or compliance with any Stock supply requirements prescribed from time to time by the Board;
- (b) pay dividends, Marketing Rebates or other Distributions in respect of a particular Class, category or type of Share, as designated or approved by the Board and in particular, but without limitation, in respect of partly paid Shares, pay any dividend, Marketing Rebate or other Distribution in proportion to the amount paid upon those Shares;
- (c) apply the whole or any part of any dividend, Marketing Rebate or other Distribution in or towards payment of the amount owing by Shareholders on any partly paid Shares;

- (d) otherwise distribute the profits of the Company as a Marketing Rebate, dividend or other Distribution, capitalisation of Shares or otherwise as the Board determines in respect of all Shareholders or any particular Shareholders; or
- (e) make Distributions as it thinks fit.

21.5 Method of Payment

Any dividend, Marketing Rebate, Distribution or other money payable in cash in respect of Shares may be paid in such manner as is determined by the Board. Marketing Rebates, dividends or other Distributions and other moneys payable to a Shareholder may also be credited to the account of that Shareholder with the Company or paid by direct credit to the bank account of that Shareholder. Any one of two or more joint holders may give effectual receipts for any Marketing Rebates, dividends or other Distributions and other moneys payable in respect of the Shares held by them as joint holders but the Company may require the receipt of all the joint holders.

The Company shall not be responsible for the loss in transmission of any cheque or warrant sent through the post as aforesaid, whether sent at the request of a Shareholder or otherwise.

21.6 Distribution Rights Not Transferred

A transfer of any Shares shall not pass the right to any Marketing Rebate, dividend or other Distribution payable or declared thereon after such transfer and before registration of the transfer.

21.7 No Distributions Bear Interest

No Marketing Rebates, dividends or other Distributions shall bear interest against the Company.

21.8 Unclaimed Distributions Forfeited

All Marketing Rebates, dividends and other Distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed and all Marketing Rebates, dividends and other Distributions unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company provided always that the Board, at any time after such forfeiture, may annul the same and pay the Marketing Rebate, dividend or other Distribution so forfeited to any person producing evidence that they are entitled to the same and shall do so unless in the opinion of the Board such payment cannot be lawfully made.

21.9 **Interim Distributions**

The Board may from time to time pay to the Shareholders such interim dividends and/or Marketing Rebates as appear to the Board to be justified by the profits of the Company.

21.10 **Deductions From Distributions**

The Board may deduct from any Marketing Rebate, dividend or other Distribution payable to any Shareholder all sums of money, if any, presently payable by that Shareholder to the Company on account of calls or instalments or premiums or otherwise or any debt, liability or engagement in respect whereof the Company has a lien on the Shares on which such Marketing Rebate, dividend or other Distribution is payable.

21.11 **Shares Remain One Class Notwithstanding Different Distributions**

Notwithstanding that in respect of some Shares of any Class or Classes there has been a distribution of Marketing Rebates in lieu of dividends from profits and in respect of other Shares of the same Class there has been a dividend or other Distribution from profits, the Shares shall remain the one class of Shares and shall continue to rank inter se pari passu for all purposes regardless of the difference in sources from which such dividends or other Distributions were paid.

21.12 **Withholding**

If, and to the extent, the Company is required to make a deduction or withholding from any Distribution or payment in respect of a Share, the Company will not be required and will not make any additional payment by gross-up or otherwise in respect of such deduction or withholding.

22 **CAPITALISATION OF PROFITS**

22.1 **Board May Capitalise Profits**

The Board may resolve that it will capitalise any Distribution or Marketing Rebate payable to Shareholders and may issue Shares or other securities:

- (a) to all or some Shareholders of the same Class in proportion to their holding of Shares of that Class or otherwise; or
- (b) to all Current Suppliers and/or Suppliers; or
- (c) in lieu of Marketing Rebates or distributions from Pools; or
- (d) to some Shareholders and Marketing Rebates to others in cash,

and for such purpose the Board may in its discretion determine the Shares or other securities to be issued, the Class in respect of which the Shares or other securities are to be issued, how those Shares or other securities are to be allocated between Shareholders (which, for the avoidance of doubt, need not be pro rata), the amount to be distributed in cash, the terms and conditions thereof and the form of Shares or other securities and in what proportions, and the value to be attributed to such distributions, in such manner as the Board considers appropriate.

22.2 Board May Capitalise Reserves

In addition to the powers in clause 22.1 the Board may resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the Shareholders who would have been entitled thereto if distributed by way of dividend or Marketing Rebate and in the same proportions on condition that the same be not paid in cash except as determined by the Board but be applied either in or towards paying up any amounts for the time being unpaid on any Shares held by those Shareholders respectively or paying up in full Shares or other securities of the Company to be allotted and distributed credited as fully paid up to and amongst those Shareholders in the proportion aforesaid, or partly in the one way and partly in the other.

22.3 Board May Give Effect to Capitalisations

The Board is empowered to make all appropriations and applications of the undivided profits resolved to be capitalised, and all allotments and issues of fully paid Shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Board to make such provision by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit in the case of Shares or other securities becoming distributable in fractions, and also to authorise any person to enter on behalf of all the Shareholders entitled thereto into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further Shares or debentures to which they may be entitled upon any such capitalisation or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts or any part of the amounts remaining unpaid on their existing Shares. Any agreement made under any such authority shall be effective and binding on all Shareholders.

23 EXECUTION OF CONTRACTS

23.1 Contracts: manner of execution

A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) two or more Directors; or
 - (ii) one or more attorneys appointed by the Company in accordance with clause 23.2; or
 - (iii) a person or persons expressly authorised by the Board for that purpose in respect of all transactions or particular transactions;
- (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

23.2 Company may appoint attorneys

The Company may, by an instrument in writing executed in accordance with clause 23.1(a), appoint one or more persons as its attorney or attorneys, either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

24 SURPLUS ASSETS

24.1 Liquidator May Divide Surplus Assets

The liquidator of the Company may, with the sanction of a Special Resolution, divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind) and may for that purpose set such value as the liquidator deems fair upon any property to be divided and may determine how the division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction, thinks fit. No

Shareholder shall be compelled to accept any Shares or other securities on which there is any liability.

24.2 **Order of Priority of Payment of Surplus Assets**

Subject to the terms upon which any Shares have been issued, if on the liquidation of the Company there are surplus assets remaining, the liquidator shall hold all surplus moneys (after payment of all fees, expenses, costs of liquidation, payment to all creditors and other preferential payments) and shall distribute that surplus in the following order of priority:

- (a) first, in repayment on a pro rata basis of:
 - (i) the nominal amount of Shares which have a nominal value; and
 - (ii) the issue price of Shares which do not have a nominal value; and
- (b) secondly, as to the balance, by division among the Shareholders (other than in respect of Shares which do not confer rights to participate in surplus assets) in kind the whole or any part of the assets of the Company (whether they consist of the property of the same kind or not) and the liquidator may:
 - (i) for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
 - (ii) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

SCHEDULE

LIMITATIONS ON RELEVANT INTERESTS ETC

1 INTERPRETATION

1.1 Definitions

In this Schedule, if not inconsistent with the context:

"affected share" means any Share which is treated as such pursuant to clause 3 of this Schedule;

"voting security" means a security issued by the Company which confers a right to vote at meetings of the Shareholders (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the security), not being a right to vote that, under the conditions attached to the security, is exercisable only in one or more of the following circumstances:

- (a) during a period in which a dividend (or part of a dividend) in respect of the security is in arrears; or
- (b) on a proposal to reduce the capital of the Company; or
- (c) on a proposal that affects rights attached to the security; or
- (d) on a proposal to put the Company into liquidation; or
- (e) on a proposal for the disposal of the whole of the property, business, and undertaking of the Company; or
- (f) during the liquidation of the Company,

and includes another security which, in accordance with the terms attached to that other security, is convertible into, or exchangeable for, a security of the first mentioned kind.

1.2 Meaning of Relevant Interest

- (a) A person has a relevant interest in a voting security (whether or not that person is the registered holder of it) if that person:
 - (i) is a beneficial owner of that voting security;
 - (ii) has the power to exercise any right to vote attached to that voting security;

- (iii) has the power to control the exercise of any right to vote attached to that voting security;
 - (iv) has the power to acquire or dispose of that voting security;
 - (v) has the power to control the acquisition or disposition of that voting security by another person; or
 - (vi) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to that voting security (whether or not that person is a party to it):
 - (A) may at any time have the power to exercise any right to vote attached to that voting security; or
 - (B) may at any time have the power to control the exercise of any right to vote attached to that voting security; or
 - (C) may at any time have the power to acquire or dispose of that voting security; or
 - (D) may at any time have the power to control the acquisition or disposition of that voting security by another person.
- (b) Where a person has a relevant interest in a voting security by virtue of clause 1.2(a) and:
- (i) that person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directions, instructions, or wishes of any person in relation to:
 - (A) the exercise of the right to vote attached to the voting security;
 - (B) the control of the exercise of any right to vote attached to the voting security;
 - (C) the acquisition or disposition of the voting security; or
 - (D) the exercise of the power to control the acquisition or disposition of the voting security by another person;
 - (ii) another person has the power to exercise the right to vote attached to 20 percent or more of the voting securities of that person;

- (iii) another person has the power to control the exercise of the right to vote attached to 20 percent or more of the voting securities of that person;
- (iv) another person has the power to acquire or dispose of 20 percent or more of the voting securities of that person; or
- (v) another person has the power to control the acquisition or disposition of 20 percent or more of the voting securities of that person,

then that other person also has a relevant interest in the voting security.

- (c) For the purposes of this Schedule, where two or more persons act jointly or in concert in respect of the exercise of the rights attaching to a voting security in which any one or more of those persons has a relevant interest, then each of those persons shall be deemed to have a relevant interest in that voting security.
- (d) A body corporate or other body has a relevant interest in a voting security in which another body corporate that is related to that body corporate or other body has a relevant interest.
- (e) A person who has, or may have, a power referred to in any of clauses 1.2(a)(ii) to 1.2(a)(vi) has a relevant interest in a voting security regardless of whether the power:
 - (i) is expressed or implied;
 - (ii) is direct or indirect;
 - (iii) is legally enforceable or not;
 - (iv) is related to a particular voting security or not;
 - (v) is subject to restraint or restriction or is capable of being made subject to restraint or restriction;
 - (vi) is exercisable presently or in the future;
 - (vii) is exercisable only on the fulfilment of a condition; or
 - (viii) is exercisable alone or jointly with another person or persons.
- (f) A power referred to in clause 1.2 exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.

- (g) A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.
- (h) Notwithstanding clauses 1.2(a) to (g), no account shall be taken of a relevant interest of a person in a voting security if:
 - (i) that person is a Director and has the relevant interest by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of Shareholders or Class of Shareholders and a copy of the resolution is deposited with the Company prior to or within any time for the deposit of proxies specified by the Board in accordance with this Constitution for the purpose of that particular meeting of Shareholders; or
 - (ii) that person is a Director and has the relevant interest solely by reason of being appointed as a proxy in accordance with this Constitution to vote at a particular meeting of Shareholders, or of a Class of Shareholders and the instrument of that person's appointment is deposited with the Company prior to or within any time for the deposit of proxies specified by the Board in accordance with this Constitution for the purpose of that particular meeting of Shareholders.

1.3 **Meaning of Associate**

- (a) A person is an associate of another person if:
 - (i) the persons are acting jointly or in concert; or
 - (ii) the first person acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (iii) the persons are related bodies corporate within the meaning of that term in section 5B(2) of the Securities Markets Act 1988; or
 - (iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
 - (v) they are both, directly or indirectly, under the control of the same person; or
 - (vi) the persons have a business relationship, personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as associates; or

- (vii) the first person is an associate of a third person who is an associate of the other person (in both cases under any of clauses 1.3(a)(i) to 1.3(a)(vi)) and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as an associate of the other person.
- (b) A director of a company or other body corporate is not an associate of that company or body corporate merely because he or she is a director of that company or body corporate.
- (c) A determination by the Board on whether a person is an associate of another person shall be binding on the Company and on each Shareholder.

1.4 **General Construction**

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

2 **LIMIT ON INTERESTS IN SECURITIES**

2.1 **Limitation on Relevant Interests**

- (a) Subject to the operation of clause 9.5 of this Constitution, no person, together with its associates, shall have a relevant interest in more than five percent (or such other percentage as the Board from time to time may determine and notify to Shareholders) of the voting securities without, and except in accordance with the terms of the prior written approval of the Board.
- (b) If the Board gives written approval under sub-clause (a) above to a person having a relevant interest in more than 5 percent of the voting securities, then the voting securities in respect of which approval has been given by the Board will not confer voting rights in the circumstances described in, and for the purposes of, clauses 9.4(b) and/or 9.5(a) of this Constitution, but will, if entitled to vote on the same basis as Ordinary Shares, be subject to the voting provisions of clause 9.5(b).
- (c) The provisions of clauses 3.1 to 3.6 inclusive shall apply if the Board determines, at its sole discretion, that it is necessary to establish whether any person has a relevant interest in any Shares in contravention of subclause (a).

3 **ENFORCEMENT OF LIMIT**

3.1 **Shares treated as affected shares**

If the Board in its discretion considers that any information reveals that any person holds a relevant interest in any Shares in contravention of clause 2.1(a), the Board is entitled to determine without further evidence that those Shares are (to the extent of such excess) to be treated as affected shares and upon making that determination must immediately give a notice ("**Disposal Notice**") to that effect to the registered holder of those Shares.

3.2 **Holders of affected shares cannot vote**

- (a) A registered holder of affected shares (including, for the avoidance of doubt, any proxy, representative, or attorney of any such person) who is given a notice under clause 3.1 is not (unless the Board's determination is withdrawn) entitled to vote in respect of those affected shares at any Shareholders', Class or Interest Group meeting of the Company.
- (b) The votes attached to such affected shares shall vest in and may be exercised by the chairperson of any such meeting who may act entirely at his or her discretion. This shall be without prejudice to the right of any such registered holder to attend or speak at any Shareholders', Class or Interest Group meeting of the Company.

3.3 **Company's power of sale**

- (a) A registered holder of affected shares shall, within one month (or such longer period as the Board may determine and specify in the notice given under clause 3.1) after receiving a notice under clause 3.1 ensure that either the affected shares or one or more persons interests therein are disposed of so that, as at the end of that period, no person has a relevant interest in those affected shares in contravention of clause 2.1(a).
- (b) If at the end of that one month period (or such longer period as aforesaid) the Board is not satisfied that such a disposal has been made, then:
 - (i) the Company may arrange for the sale of the affected shares at the best price reasonably obtainable at the relevant time, based on advice obtained by it for the purpose so that they are no longer capable of being treated as affected shares;
 - (ii) each registered holder is deemed to have authorised the Company to act on behalf of that registered holder in relation to the sale of the affected shares and to sign all documents which may be required in order to effect any such sale and the Board may register a transfer of the affected shares so sold, whether or not

the transfer has been properly completed and whether or not it is accompanied by the certificates (if any) for the affected shares;

- (iii) the person to whom such affected shares are transferred shall not be bound to see to the application of the purchase money, nor shall his, her or its title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale of those shares; and
- (iv) the proceeds of the sale of any Shares sold under this clause must be applied as follows:
 - (A) first, in payment of any reasonable sale expenses and any other costs incurred by the Company in exercising the powers conferred on the Company or the Board by this Schedule;
 - (B) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the securities;
 - (C) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors or administrators on surrender of the certificate (if any) relating to the affected shares.

3.4 **Withdrawal or amendment of determination**

If the Board considers that any determination made under clause 3.1 or clause 3.3 should be withdrawn or amended, it may do so, and must give notice of the withdrawal or amendment to the registered holder of the affected shares within 10 working days of having so resolved. On withdrawal, those shares shall cease to be affected shares.

3.5 **Absence of notice does not invalidate**

The Board shall not be obliged to serve any notice required under this Schedule to be served upon any person if it does not know either the identity or address of the person. The absence of service of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this Schedule shall not prevent the implementation of or invalidate any procedure under this Schedule. Section 391 of the Act shall apply to the service on persons of notices required under this clause as if references in that section to Shareholders were references to those persons and references to the addresses of Shareholders were references to the last addresses of those persons known to the Company.

3.6 **Decisions final, conclusive and binding**

Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Board or by the chairman of any meeting under or pursuant to this Schedule shall be final and conclusive and any disposal or transfer made, or other things done, by or on behalf of, or on the authority of, the Board pursuant to this Schedule shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever.

3.7 **Certificate conclusive**

A certificate signed by a Director and countersigned by a second Director, that a power of sale under this Schedule has arisen and is exercisable by the Board, or that a Share has been duly transferred under this Schedule on the date stated therein, shall be conclusive evidence of the facts stated therein.

3.8 **This Schedule paramount**

This Schedule shall apply notwithstanding any other provision or schedule of this Constitution which is inconsistent with or contrary to it.