

# Constitution

Warrnambool Cheese and Butter  
Factory Company Holdings Limited

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MinterEllison

L A W Y E E R S

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# Constitution of Warrnambool Cheese and Butter Factory Company Holdings Limited

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# Preliminary

## 1. Defined terms & interpretation

### 1.1 In this Constitution:

**Alternate Director** means a person appointed as an alternate director under clause 65.

**Associate** has the meaning given to associate set out in Division 2 of Part 1.2 of the *Corporations Act 2001* (Cth), but provided always that a person will not be regarded as having control merely because of being appointed as attorney, proxy or representative of the holder of a Share in relation to a specific meeting or otherwise being under a legal obligation to exercise a right for the benefit of another provided that consideration has not been exchanged between the holder and the attorney, proxy, representative or that other.

**Associate Director** means an associate director appointed under clause 66.

**ASTC** has the same meaning as in the *Corporations Regulations 2001* (Cth).

**ASTC-regulated Transfer** has the same meaning as in the *Corporations Regulations 2001* (Cth).

**ASX** means Australian Stock Exchange Limited ACN 008 624 691.

**Auditor** means the Company's auditor.

**Business Day** has the same meaning as in the Listing Rules.

**CHESS** has the same meaning as in the SCH Business Rules.

**CHESS Holding** has the same meaning as in the SCH Business Rules.

**Company** means Warrnambool Cheese and Butter Factory Company Holdings Limited ACN 071 945 232.

**Constitution** means the constitution of the Company as amended from time to time.

**Corporations Act 2001 (Cth)** means the *Corporations Act 2001* (Cth) and includes any regulations made under that Act and any exemption or modification to that Act which applies to the Company.

**Director** means a person appointed to the position of a director of the Company and where appropriate, includes an Alternate Director but excludes an Associate Director.

**Directors** means all or some of the Directors acting as a board.

**Dividend** includes bonus.

**Executive Director** means a person appointed as an Executive Director under clause 73.

**Issuer Sponsored Holding** has the same meaning as in the SCH Business Rules.

**Listed** means that securities of a body are listed for quotation on the ASX official list or the official list of any other Prescribed Financial Market.

**Listing Rules** means the listing rules, and any other rules, of ASX or other Prescribed Financial Market, which are applicable while the Company is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX or other Prescribed Financial Market, as relevant.

**Managing Director** means a Director appointed as managing director under clause 73.

**Member** means a person who is a member of the Company under the *Corporations Act 2001* (Cth).

**Non Executive Director** means a Director who is not an Executive Director.

**Office** means the Company's registered office.

**Operating Rules**, in relation to a Prescribed CS Facility, has the same meaning as in Chapter 7 of the *Corporations Act 2001* (Cth).

**Prescribed CS Facility** has the same meaning as in Chapter 7 of the *Corporations Act 2001* (Cth).

**Prescribed Financial Market** has the same meaning as set out in the *Corporations Act 2001* (Cth).

**Primary Notice** means a written notice addressed to the holder of a Share requiring the person to provide the Company a written statement setting out:

- (a) full particulars of the holder's relevant interests in the Shares and of the circumstances because of which the holder has that interest; and
- (b) so far as is known to the holder:
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Shares;
  - (ii) full particulars of each such interest and of the circumstances because of which the other person has that interest; and
  - (iii) full particulars of the name and address of each person (if any) who has given to the holder of the Shares relevant instructions in relation to any of the Shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

**Proper ASTC Transfer** has the same meaning as in the *Corporations Regulations 2001* (Cth).

**Register** means the register of Members of the Company.

**Registered Address** means the last known address of a Member as noted in the Register.

**Related Body Corporate** has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

**Representative** means a person appointed by a Member to act as its representative under clause 51.1 or under section 250D of the *Corporations Act 2001* (Cth).

**Restricted Securities** has the same meaning as in the Listing Rules.

**Review Date** means the date which is five years after the last review of the Shareholding Limit by Members under clause 4.11, commencing on the fifth anniversary of the Sunset Date.

**SCH Business Rules** means the Operating Rules of ASTC or the Operating Rules of any other Prescribed CS Facility which apply to the Company or its Shares in addition to, or in substitution for, the Operating Rules of ASTC.

**Secondary Notice** means a written notice addressed to a person requiring the person to provide the Company a written statement setting out:

- (a) full particulars of any relevant interests that the person has in any of the Shares and of the circumstances because of which the person has that interest; and

- (b) so far as is known to the person:
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Shares;
  - (ii) full particulars of each such interest and of the circumstances because of which the other person has that interest; and
  - (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the Shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

**Seal** means the Company's common seal.

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if more than one person is appointed, any one or more of such persons.

**Shareholding Limit** means the limit under clause 4.2.

**Shares** means shares in the share capital of the Company.

**Sunset Date** means the fifth anniversary of the date on which the Company is Listed.

**Supplier** means persons actively supplying milk directly or indirectly through another party to the Company.

**Supplier Director** means a Director who is also a Supplier.

- 1.2 In this Constitution, unless the contrary intention appears:
  - (a) the singular includes the plural and vice versa and words importing a gender include other genders;
  - (b) words importing natural persons include corporations;
  - (c) headings are for ease of reference only and do not affect the construction of this Constitution; and
  - (d) a reference to the *Corporations Act 2001* (Cth) is a reference to the *Corporations Act 2001* (Cth) as modified, amended or replaced from time to time.
- 1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in the *Corporations Act 2001* (Cth). Where the expression has more than one meaning in the *Corporations Act 2001* (Cth) and a provision of the *Corporations Act 2001* (Cth) deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.
- 1.4 The provisions of the *Corporations Act 2001* (Cth) that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.
- 1.5 For the purposes of this Constitution, if the provisions of:
  - (a) the *Corporations Act 2001* (Cth) and the Listing Rules;
  - (b) the *Corporations Act 2001* (Cth) and the SCH Business Rules; or
  - (c) the *Corporations Act 2001* (Cth) and this Constitution,conflict on the same matter, the provisions of the *Corporations Act 2001* (Cth) prevail.

- 1.6 If the Company is not Listed, a provision of this Constitution subject to or in any way restricted by the Listing Rules or the SCH Business Rules is to be construed as if the provision were not expressed to be subject to or restricted by the Listing Rules or the SCH Business Rules.

## Shares

### 2. Rights

Subject to this Constitution and to the terms of issue of Shares, all Shares attract the following rights:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company at one vote per Share;
- (b) the right to receive dividends; and
- (c) in a winding up or a reduction of capital, the right to participate equally in the distribution of the assets of the Company (both capital and surplus), subject to any amounts unpaid on the Share and, in the case of a reduction, to the terms of the reduction.

### 3. Issue of Shares

3.1 Subject to the *Corporations Act 2001* (Cth), the Listing Rules and this Constitution, the Directors may issue and allot, or dispose of, Shares:

- (a) on terms determined by the Directors;
- (b) at the issue price that the Directors determine; and
- (c) to Members whether in proportion to their existing shareholdings or otherwise, and to such other persons as the Directors may determine.

3.2 The Directors' power under clause 3.1 includes the power to:

- (a) grant options over unissued Shares;
- (b) issue and allot Shares:
  - (i) with any preferential, deferred or special rights, privileges or conditions;
  - (ii) with any restrictions in regard to dividend, transfer, maximum shareholding, voting, return of capital or otherwise;
  - (iii) which are liable to be redeemed;
  - (iv) which are bonus Shares for whose issue no consideration is payable to the Company; or
  - (v) which have any combination of the characteristics described in subparagraphs (i) to (iv) inclusive.

### 4. Maximum Shareholding

4.1 For the purposes of this clause 4, all Shares (regardless of class) are considered ordinary shares that carry the right of one vote per share.

4.2 (a) No person, either alone or with its Associates, may:

- (i) hold;
- (ii) have power to vote in respect of; or
- (iii) have power to dispose of,

Shares that represent more than 5% of the Shares on issue at any time.

- (b) For the purposes of clause 4.2(a)(ii) a person is deemed to have in relation to any Share the same power as its Associate has if:

- (i) the person has;
- (ii) an Associate of the person has;
- (iii) Associates of the person together have; or
- (iv) the person and one or more Associates of the person together have, power to vote in respect of more than 5% of the issued Shares.

- 4.3 Without in any way limiting clause 4.2 no person, either alone or with its Associates, may:

- (a) be beneficially entitled to; or
- (b) have power to control the exercise of the right to vote attached to,

Shares representing more than 5% of the Shares on issue at any time (including Shares held by that person or Associate).

- 4.4 For the purposes of clause 4.2(b), but without in any way limiting the generality of that provision, a person is deemed to have power to control the exercise of the right to vote attached to a Share if the person and any one or more of:

- (a) the holder of the Share;
- (b) the beneficial owner of the Share; and
- (c) any other person entitled to exercise the vote attached to the Share (including by proxy or representative),

have agreed (whether in writing or otherwise) that the first mentioned person is able to influence substantially the exercise of the right to vote attached to the Share.

- 4.5 Where it would result in a breach of clause 4.2:

- (a) a person, either alone or with its Associate, must not acquire any Shares;
- (b) the Directors shall not allot any unissued Shares to a person, either alone or with its Associate; and
- (c) the Directors shall not authorise the issue or allotment of any securities of the Company which, by virtue of any terms or conditions applicable to them, are convertible, or may be converted, into Shares unless those terms or conditions provide that those securities may not be so converted by their holder if the Directors are of the opinion that the conversion will result in a person contravening clause 4.2.

- 4.6 If, in relation to any Shares held by a person, clause 4.2 is breached and then only to the extent that the 5% limitation has been exceeded:

- (a) the Directors, in their absolute discretion, but acting reasonably, may nominate which Share or Shares are held by the person in breach of this Constitution (**Breach Shares**); and

- (b) all rights to vote and to be paid dividends in respect of the Breach Shares will be suspended while clause 4.2 continues to be breached.
- 4.7
- (a) The Company may give to the holder of any voting Share a Primary Notice in respect of Breach Shares.
  - (b) Within two Business Days of receipt of a Primary Notice, the holder must provide the information requested, failing which the Shares the subject of the notice will be deemed to be Breach Shares for the purposes of clauses 4.6 and 4.9, which clauses will apply to those Shares until the information is provided.
  - (c) Where the Company receives (either in response to a Primary Notice or a Secondary Notice) information that:
    - (i) another person has a relevant interest in any Breach Share; or
    - (ii) another person has given relevant instructions in relation to any Breach Share,the Company may give to that other person a Secondary Notice in relation to that Breach Share.
  - (d) Within two Business Days of receipt of a Secondary Notice, the recipient must provide the information requested, failing which the Shares the subject of the notice will be deemed to be Breach Shares in breach for the purposes of clauses 4.6 and 4.9, which clauses will apply to those Breach Shares until the information is provided.
  - (e) The Company may at any time (including after the two Business Days response period has expired) withdraw a Primary Notice or Secondary Notice by notice in writing to the recipient, in which case the recipient may disregard that notice and, to the extent that clause 4.7(b) or 4.7(d) applied to the Shares the subject of the notice, those clauses will cease to apply to those Shares.
  - (f) The Directors may, in their discretion, resolve that a person be excused (either in whole or in part) from compliance with a Primary Notice or a Secondary Notice where the recipient of that notice requests to be excused within the period of two Business Days after receipt of the notice, which request must be in writing and accompanied by an explanation as to why the person should be so excused.
  - (g) The Company is not, because of anything done under clause 4.6:
    - (i) to be taken for any purpose to have notice of; or
    - (ii) put on enquiry as to,the right or rights of a person in relation to a Share.
- 4.8
- Despite any other provision of clause 4, the power of a person to vote in respect of a Share for the purposes of clause 4.6 will be disregarded if it arises solely as a consequence of being appointed as attorney, proxy or representative of the holder of the Share in relation to a specific meeting and where no consideration has been exchanged between the holder and the attorney, proxy or representative.
- 4.9
- If the Directors are of the opinion that a person (in this clause 4.9, the '**Owner**') contravenes clause 4.2:
- (a) the Directors may cause a notice to be given to any person believed by the Directors to be a Member in respect of any Breach Share owned by the Owner, requiring the disposal of any Breach Shares, within a period of not less than 28 days of the date of that notice; and

- (b) the requirements of a notice given under clause 4.9(a) are not complied with, the Company may sell, in such manner and on such terms as the Directors in their absolute discretion determine, the Breach Shares, and a transfer of any Breach Shares signed by a Director for the purposes of giving effect to the sale shall be as valid and effectual as if signed by the Member in respect of the Breach Shares; and
  - (c) the Company may receive and give a good discharge for the proceeds of a sale under clause 4.9(b), may pay or recoup out of those proceeds all costs and expenses of or incidental to the sale and shall pay the net amount to the person (the 'Former Member') who immediately before the sale was the Member in respect of the Breach Shares sold; and
  - (d) the Company may pay the net amount to the Former Member under 4.9(c) by cheque posted to the Former Member at his address appearing in the Register; and
  - (e) the omission to give a notice to a person under clause 4.9(a), shall not affect the validity of a notice given to another person in respect of a Share owned by the Owner.
- 4.10 The Shareholding Limit must be put to Members for renewal by way of ordinary resolution by no later than three months prior to the Sunset Date.
- 4.11 If the Shareholding Limit is renewed under clause 4.10, it must be put to Members for renewal by ordinary resolution by no later than three months prior to each Review Date.
- 4.12 If the Shareholding Limit is not renewed under clause 4.10, the Shareholding Limit will automatically increase to:
- (a) 10% on the fifth anniversary of the Company being Listed; and
  - (b) 15% on the sixth anniversary of the Company being Listed.
- 4.13 This clause 4 will cease to have effect on the earlier of:
- (a) the Shareholding Limit being removed by special resolution;
  - (b) the Shareholding Limit not being renewed by ordinary resolution on any Review Date under clause 4.11; or
  - (c) if the Shareholding Limit is not renewed by ordinary resolution under clause 4.10, the seventh anniversary of the Company being Listed.
- 4.14 If the Shareholding Limit is increased under clause 4.12, then references to 5% in this clause 4 are to be read as references to the relevant limit under clause 4.12.
- 4.15 This clause will apply despite any other provision of this Constitution which is inconsistent or contrary.
- 4.16 If the whole or any part of this clause is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this clause has full force and effect and the validity or enforceability of that provision in any jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this clause or is contrary to public policy.

## 5. Commission and brokerage

Any brokerage or commission which may be paid by the Company may be made in cash, by the issue and allotment of Shares, the issue of debentures, or by a combination of any of those methods.

## 6. Trusts not recognised

- 6.1 Except as required by law, the SCH Business Rules or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not be bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.
- 6.2 This clause 6 applies even if the Company has notice of the relevant trust, interest or right.

## 7. Joint holders

- 7.1 If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with benefit of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.
- 7.2 Any one of the joint holders of a Share may give an effective receipt for any dividend or return of capital payable to the joint holders.
- 7.3 The Company is entitled to and in respect of CHESS Holdings, must:
- (a) record the names of only the first three joint holders of a Share on the Register;
  - (b) regard the three joint holders of a Share appearing first on the Register as the registered holders of that Share to the exclusion of any other holders; and
  - (c) disregard the entitlement of any person to be registered on the Register as a holder if the name of the person would appear on the Register after the first three holders for that Share.

## 8. Buy Backs

- 8.1 Subject to the *Corporations Act 2001* (Cth) and the Listing Rules, the Company may buy back Shares on terms and at times determined by the Directors in their discretion.

## 9. Share certificates

- 9.1 The Directors will not, unless they determine otherwise or the Listing Rules require, issue a certificate to a Member for any Shares registered in the Member's name or record any holding as held on a certificated subregister.
- 9.2 Any certificate for Shares must be issued and despatched in accordance with the *Corporations Act 2001* (Cth), the SCH Business Rules and the Listing Rules.
- 9.3 Subject to the Listing Rules, the Directors may in their absolute discretion elect whether to maintain a certificated subregister for any class of Shares.
- 9.4 Subject to the Listing Rules and the SCH Business Rules, Shares may be held on any subregister maintained by or on behalf of the Company or on any branch register kept by the Company.
- 9.5 The Directors may order worn out or defaced certificates to be cancelled and, if necessary, replaced by new certificates.

## 10. Variation of class rights

- 10.1 The rights attaching to any Shares in a class of Shares may, unless their terms of issue state otherwise, be varied or cancelled by a special resolution of the Company:
- (a) with the written consent of the holders of 75% of the Shares of the class; or
  - (b) with the sanction of a special resolution passed at a separate meeting of the holders of Shares of that class.
- 10.2 The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:
- (a) a quorum is two persons holding or representing by proxy, attorney or Representative at least one third of the Shares of the class or, if there is one holder of Shares in a class, that person; and
  - (b) any holder of Shares of the class, present in person or by proxy, attorney or Representative may demand a poll.
- 10.3 The rights conferred on the holders of Shares of any class will not be taken to be varied by:
- (a) the issue of more Shares; or
  - (b) the conversion of securities to new securities,
- which rank equally with or in priority to those Shares, unless expressly provided by their respective terms of issue, the *Corporations Act 2001* (Cth) or the Listing Rules.

## Calls

### 11. General

- 11.1 Subject to the *Corporations Act 2001* (Cth) and the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.
- 11.2 A call is made when the resolution of the Directors authorising it is passed.
- 11.3 The Directors may revoke or postpone a call before its due date for payment.
- 11.4 The Directors may require a call to be paid by instalments.
- 11.5 The Company must comply with the *Corporations Act 2001* (Cth) and the Listing Rules in relation to the dispatch and content of notices to Members on whom a call is made.
- 11.6 Subject to the requirements of clause 11.8, at least 10 business days before the due date for payment of a call the Company must send to Members on whom the call is made a notice specifying:
- (a) the amount of the call;
  - (b) the due date for payment; and
  - (c) the place for payment.
- 11.7 A Member to whom notice of a call is given in accordance with this clause 11 must pay to the Company the amount called in accordance with the notice.
- 11.8 Failure to send a notice of a call to any Member or the non receipt of a notice by any Member does not invalidate the call.

11.9 Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

## 12. Instalments and amounts which become payable

If:

- (a) the Directors require a call to be paid by instalments; or
- (b) an amount becomes payable by the terms of issue of Shares on allotment, or at a time or in circumstances specified in the terms of issue,

then:

- (c) every instalment or the amount payable under the terms of issue is payable as if it were a call made by the Directors and as if they had given notice of it; and
- (d) the consequences of late payment or non payment of an instalment or the amount payable under the terms of issue are the same as the consequences of late payment or non payment of a call.

## 13. Interest and expenses

If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
  - (b) all expenses incurred by the Company as a consequence of the non payment,
- but the Directors may waive payment of the interest and expenses in whole or in part.

## 14. Recovery of amounts due

On the hearing of any action for the recovery of money due for any call, proof that:

- (a) the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;
- (b) the resolution making the call is duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued,

will be conclusive evidence of the debt.

## 15. Differentiation

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

## 16. Payment of calls in advance

16.1 The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called.

16.2 The Company may:

- (a) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and
  - (b) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.
- 16.3 Payment of an amount in advance of a call does not entitle the paying Member to any:
- (a) dividend, benefit or advantage, other than the payment of interest under this clause 16; or
  - (b) voting right,
- to which the Member would not have been entitled if it had paid the amount when it became due.

## Lien and forfeiture

### 17. Lien

- 17.1 To the extent permitted by the Listing Rules, the Company has a first and paramount lien on every partly paid Share and dividends payable in respect of the Share for all money:
- (a) due and unpaid to the Company at a fixed time, in respect of the Share;
  - (b) presently payable by a holder or the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
  - (c) which the Company is required by law to pay (and has paid) in respect of the Share.
- 17.2 The lien extends to reasonable interest and expenses incurred because the amount is not paid.
- 17.3 If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to make payment in respect of Shares or dividends or other moneys accruing due to the Member who holds the Shares:
- (a) the Member or, if the Member is deceased, the Member's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
  - (b) subject to the *Corporations Act 2001* (Cth) and the Listing Rules, the Company:
    - (i) has a lien on the Shares and dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly with another person in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Member;
    - (ii) may set off amounts so paid by the Company against amounts payable by the Company to the Member as dividends or otherwise; and
    - (iii) may recover as a debt due from the Member or its legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in clause 17.3(b)(i).
- 17.4 The Company may do all things which the Directors think necessary or appropriate to do under the SCH Business Rules and the Listing Rules to enforce or protect the Company's lien.
- 17.5 Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.

17.6 The Directors may declare a Share to be wholly or partly exempt from a lien.

## 18. Lien sale

If:

- (a) the Company has a lien on a Share for money presently payable;
- (b) the Company has given the Member or the Member's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
- (c) that Member fails to pay all of the money demanded,

then 14 or more days after giving the notice, the Directors may, if the Listing Rules permit, sell the Share in any manner determined by them.

## 19. Forfeiture notice

19.1 The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay all or any of the following:

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all expenses incurred by the Company as a consequence of the non payment.

19.2 The notice under clause 19.1 must:

- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
- (b) state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

## 20. Forfeiture

20.1 If a Member does not comply with a notice served under clause 19, then any or all of the Shares in respect of which the notice was given may be forfeited under a resolution of the Directors.

20.2 Unpaid dividends in respect of forfeited Shares will also be forfeited.

20.3 On forfeiture, Shares become the property of the Company and forfeited Shares may be:

- (a) if the Listing Rules permit, sold, disposed of, or cancelled on terms determined by the Directors; or
- (b) offered by public auction in accordance with any requirements of the Listing Rules.

20.4 The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.

20.5 Promptly after a Share has been forfeited:

- (a) notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture; and
- (b) the forfeiture and its date must be noted in the Register.

20.6 Omission or neglect to give notice of or to note the forfeiture as specified in clause 20.5 will not invalidate a forfeiture.

## 21. Liability of former Member

21.1 The interest of a person who held Shares which are forfeited is extinguished but subject to the Listing Rules, the former Member remains liable to pay:

- (a) all money (including interest and expenses) that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares; and
- (b) interest from the date of forfeiture until payment of the money referred to in paragraph (a), of this clause at a rate determined by the Directors (not exceeding 20% per annum).

21.2 A former Member's liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the former Member in respect of the Shares. The Member's liability may only be released or waived in accordance with the Listing Rules.

## 22. Disposal of Shares

22.1 The Company may:

- (a) receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share, or a Share sold under a lien sale; and
- (b) effect a transfer of the Share in favour of a person to whom the Share is sold or disposed of.

22.2 The purchaser of the Share:

- (a) is not bound to check the regularity of the sale or the application of the purchase price;
- (b) obtains title to the Share despite any irregularity in the sale; and
- (c) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.

22.3 A statement signed by a Director and the Secretary that the Share has been regularly forfeited and sold or reissued or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.

22.4 Subject to the terms on which a Share is on issue, the net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:

- (a) in payment of the costs of the sale;
- (b) in payment of all amounts (if any) secured by the lien or all money (if any) that was payable in respect of the forfeited Share; and
- (c) where the Share was forfeited under clause 20.1, in payment of any surplus to the former Member whose Share was sold.

# Transfer of Shares

## 23. General

- 23.1 Subject to this Constitution and any rights or restrictions attaching to any class of Share, a Member may transfer Shares held by that Member.
- 23.2 Subject to clause 23.3, Shares may be transferred by:
- (a) a written transfer instrument in any usual or common form; or
  - (b) any other form approved by the Directors.
- 23.3 (a) The Company may participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the *Corporations Act 2001* (Cth), the Listing Rules and the Operating Rules of a Prescribed CS Facility, or corresponding laws or securities exchange rules in any other country (as applicable).
- (b) If the Company participates in a system of the kind described in clause 23.3(a), then despite any other provision of this Constitution:
- (i) Shares may be transferred, and transfers may be registered, in any manner required or permitted by any one or more of the Listing Rules, the SCH Business Rules or the Operating Rules of a Prescribed CS Facility, (or corresponding laws or securities exchange rules in any other country) applying in relation to the system;
  - (ii) the Company must comply with and give effect to those rules; and
  - (iii) the Company may, in accordance with those rules, decline to issue certificates for holdings of Shares.
- 23.4 A written transfer instrument referred to in clause 23.2 must be:
- (a) executed by the transferor or (where the *Corporations Act 2001* (Cth) permits) stamped by the transferor's broker;
  - (b) unless the Directors decide otherwise in the case of a fully paid Share, executed by the transferee or (where the *Corporations Act 2001* (Cth) permits) stamped by the transferee's broker; and
  - (c) in the case of a transfer of partly paid Shares, endorsed or accompanied by an instrument executed by the transferee or by the transferee's broker to the effect that the transferee agrees to accept the Shares subject to the terms and conditions on which the transferor held them, to become a Member and to be bound by the Constitution.
- Subject to the *Corporations Act 2001* (Cth), the written transfer instrument may comprise more than one document.
- 23.5 Except as required by the SCH Business Rules:
- (a) a transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares; and
  - (b) a transfer of Shares does not pass the right to any dividends on the Shares until such registration.

## 24. Transfer procedure

- 24.1 Except where the Directors determine (to comply with laws or securities exchange rules of a foreign country or the SCH Business Rules), for a transfer of Shares that is not an ASTC-regulated Transfer:
- (a) the written transfer instrument must be left together with any fee at the Office or another place acceptable to the Company;
  - (b) the instrument must be accompanied by a certificate for the Shares dealt with in the transfer where a certificate has been issued, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
  - (c) the Directors may, if the Listing Rules permit, require other evidence of the transferor's right to transfer the Shares.
- 24.2 For a transfer of Shares that is an ASTC-regulated transfer, a Share transfer must be effected in accordance with the Listing Rules and the SCH Business Rules.

## 25. Right to refuse registration

- 25.1 The Directors may in their absolute discretion refuse to register any transfer of Shares or other securities where the Shares or other securities are not quoted by ASX or other Prescribed Financial Market. Where the Shares or other securities are Listed, the Directors may in their absolute discretion refuse to register any transfer in any of the circumstances permitted by the Listing Rules.
- 25.2 The Directors must:
- (a) except as permitted by the Listing Rules, ASX or other Prescribed Financial Market, as relevant, refuse to register any transfer of Shares or other securities which are Restricted Securities if that transfer is or might be in breach of the Listing Rules or any restriction agreement entered into by the Company under the Listing Rules in relation to the Shares; and
  - (b) refuse to register any transfer where the Company is, or the Directors are, required to do so by the Listing Rules.
- 25.3 Despite clauses 25.1 and 25.2, the Company must not refuse or fail to register or give effect to, or delay or in any way interfere with, a Proper ASTC Transfer of Shares or other securities quoted by ASX or other Prescribed Financial Market, as relevant.
- 25.4 If a person has lodged a transfer which the Directors have refused to register, the Company must, within five Business Days after the date of lodgment, give to the lodging person written notice of the refusal and the reasons for it.
- 25.5 Subject to clause 25.3, Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules, ASX or other Prescribed Financial Market, as relevant. The Company will refuse to acknowledge a disposal of Restricted Securities to the extent required under the Listing Rules.

# Transmission of Shares

## 26. Title on death

- 26.1 The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 26.2 If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 26.3 The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- 26.4 The Company may register or give effect to a transfer to a transferee who dies before the transfer is registered.

## 27. Entitlement to transmission

- 27.1 A person who becomes entitled to a Share in consequence of the death, mental incapacity or bankruptcy of a Member may, subject to clause 25 and to producing to the Company evidence of its entitlement which is satisfactory to the Directors, elect to:
- (a) be registered as the holder of the Share; or
  - (b) transfer the Share to some other person nominated by it.
- 27.2 If the person who has become entitled to a Share:
- (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by him or her; or
  - (b) elects to transfer the Share, then the person must effect a transfer of the Share.
- 27.3 An election to be registered as a holder of a Share under clause 27.1(a) or a transfer of a Share from a Member or deceased Member under this clause 27 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member himself or herself.
- 27.4 A person who:
- (a) has become entitled to a Share by operation of law; and
  - (b) has produced evidence of that person's entitlement which is satisfactory to the Directors, is entitled to the dividends and other rights of the registered holder of the Share.
- 27.5 Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.
- 27.6 Any person who is registered under this clause must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

# Changes to Share capital

## 28. Consolidation or division

For the purpose of giving effect to any consolidation or division of Shares, the Directors may, subject to the Listing Rules and the SCH Business Rules, settle any difficulty which arises with respect to fractions of Shares in any manner that they think expedient.

# Powers of attorney

## 29. Powers of attorney

- 29.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which is relevant to the Company or the Member's shareholding in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 29.2 The Company may require the Member to lodge a certified copy of the instrument for retention by the Company, and ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- 29.3 Any power of attorney granted by a Member will, as between the Company and the Member who granted the power of attorney:
- (a) continue in force; and
  - (b) may be acted on,
- unless express notice in writing of its revocation or of the death of the Member who granted it is lodged with the Company.
- 29.4 Where a Member proposes that an attorney represent the Member at a general meeting or adjourned meeting, the Member must comply with clause 49.1 of this Constitution.

# General meetings

## 30. Calling general meeting

- 30.1 A Director may at any time call a meeting of Members.
- 30.2 The Directors must call annual general meetings in accordance with the *Corporations Act 2001* (Cth), to be held by the Company at times to be determined by the Directors.
- 30.3 Members may only request or call and arrange to hold general meetings in accordance with the procedures and requirements set out in the *Corporations Act 2001* (Cth).
- 30.4 A general meeting may be held at two or more venues simultaneously using any technology that gives the Members as a whole a reasonable opportunity to participate.

## 31. Notice

- 31.1 Notice of a general meeting must be given in accordance with the *Corporations Act 2001* (Cth) to the persons referred to in clause 94.1.

- 31.2 Except as permitted by the *Corporations Act 2001* (Cth), general meetings must be called on at least the minimum number of days notice required by the *Corporations Act 2001* (Cth) and otherwise in accordance with the procedures set out in the *Corporations Act 2001* (Cth).
- 31.3 Subject to the requirements of the *Corporations Act 2001* (Cth), a notice calling a general meeting must:
- (a) specify the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) state the general nature of the business to be transacted at the meeting;
  - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (d) include such statements about the appointment of proxies as are required by the *Corporations Act 2001* (Cth);
  - (e) specify a place and facsimile number and may specify an electronic address for the purposes of proxy appointments;
  - (f) subject to the SCH Business Rules, specify particulars of any determination made under regulation 7.11.37 of the *Corporations Regulations 2001* (Cth); and
  - (g) comply with any other requirements of the *Corporations Act 2001* (Cth).
- 31.4 (a) The Directors may postpone or cancel any general meeting (other than a meeting requested or called by Members under clause 30.3) at any time before the day of the meeting.
- (b) The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices of a general meeting.
- 31.5 An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member or the non receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## 32. Business

- 32.1 The business of an annual general meeting may include:
- (a) any of the following matters, even if not referred to in the notice of meeting:
    - (i) consideration of the annual financial report, directors' report and auditor's report;
    - (ii) election of directors;
    - (iii) appointment of the auditor;
    - (iv) fixing the auditor's remuneration;
  - (b) any business which under this Constitution or the *Corporations Act 2001* (Cth) is required to be transacted at an annual general meeting; and
  - (c) any other business which may lawfully be transacted at a general meeting.
- 32.2 The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
- (a) ask questions about or make comments on the management of the Company; and

- (b) ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report for the Company.

## Proceedings at general meetings

### 33. Member

In clauses 34, 35, 38 and 43, Member includes a Member present in person or by proxy, attorney or Representative.

### 34. Quorum

- 34.1 No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.
- 34.2 A quorum of Members at a general meeting is two Members unless there is only one registered Member, then a quorum is that Member.
- 34.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (a) the general meeting is automatically dissolved if it was requested or called by Members under clause 30.3; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting the general meeting is automatically dissolved.

### 35. Chairperson

- 35.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 35.2 If:
  - (a) there is no chairperson or deputy chairperson; or
  - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,the Directors present may elect a chairperson of the general meeting of the Members.
- 35.3 If no chairperson is elected in accordance with clause 35.2, then:
  - (a) the Members may elect one of the Directors present as chairperson; or
  - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

- 35.4 At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- 35.5 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## 36. General conduct

The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.

## 37. Adjournment

- 37.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 37.2 An adjourned general meeting may take place at a different venue from the initial general meeting.
- 37.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 37.4 If a general meeting has been adjourned for more than 21 days, notice of the adjourned general meeting must be given to Members as if it were an original general meeting, but otherwise it is not necessary to give notice of an adjourned general meeting or the business of the adjourned general meeting.
- 37.5 A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

## 38. Decisions of questions

- 38.1 Subject to the *Corporations Act 2001* (Cth) in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 38.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the *Corporations Act 2001* (Cth).
- 38.3 A poll may be demanded:
- (a) before a vote is taken; or
  - (b) in the case of a vote taken on a show of hands, immediately before or immediately after, the results of the vote are declared.
- 38.4 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and

(b) an entry to that effect in the minutes of the meeting,  
are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

38.5 The demand for a poll may be withdrawn.

38.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

## 39. Taking a poll

39.1 Subject to clause 39.4, a poll will be taken when and in the manner that the chairperson directs. No notice need be given of any poll.

39.2 The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.

39.3 The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.

39.4 A poll demanded by the chairperson on any resolution concerning the adjournment of a general meeting must be taken immediately.

39.5 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 40. Casting vote of chairperson

The chairperson does not have a casting vote (in addition to the chairperson's votes as a Member, proxy, attorney or Representative) on a show of hands or on a poll.

## 41. Admission to general meetings

The chairperson of a general meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person:

(a) refuses to permit examination of any article in the person's possession; or

(b) is in possession of any:

(i) electronic or recording device;

(ii) placard or banner; or

(iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption;  
or

(c) causes any disruption to the meeting.

## 42. Auditor's right to be heard

The Auditor is entitled to:

(a) attend any general meeting of the Company;

- (b) be heard at any general meeting of the Company on any part of the business of the meeting that concerns the Auditor in their capacity as auditor, even if:
  - (i) the Auditor retires at the general meeting; or
  - (ii) Members pass a resolution to remove the Auditor from office; and
- (c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

## Votes of Members

### 43. Entitlement to vote

- 43.1 Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
- (a) every Member may vote;
  - (b) subject to clause 47.4 and the *Corporations Act 2001* (Cth), on a show of hands every Member has one vote; and
  - (c) on a poll every Member has one vote for each fully paid Share held by that Member which entitles that Member to vote.
- 43.2 During a breach of the Listing Rules relating to Shares which are Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to any voting rights in respect of those Restricted Securities.
- 43.3 If a Member is in breach of clause 4, that Member is not entitled to any voting rights in respect of those Breach Shares nominated under clause 4.6.
- 43.4 If a Member:
- (a) dies; or
  - (b) through mental or physical infirmity, is incapable of managing the Member's affairs, and a personal representative, trustee or other person is appointed under law to administer the Member's estate or property, the personal representative, trustee or person so appointed may exercise any rights of the Member in relation to a general meeting as if the personal representative, trustee or person (as the case may be) was a Member.

### 44. Unpaid calls

A Member is entitled to:

- (a) vote; or
- (b) be counted in a quorum,

only in respect of Shares on which all calls due and payable have been paid.

### 45. Joint holders

- 45.1 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

45.2 For the purposes of this clause 45, several executors or administrators of a deceased Member in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

## 46. Objections

46.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

46.2 An objection must be referred to the chairperson of the general meeting, whose decision made in good faith is final.

46.3 Subject to clause 46.4, a vote which the chairperson does not disallow under an objection is valid for all purposes.

46.4 A vote which the Listing Rules require the Company to disregard is not valid.

## 47. Votes by proxy

47.1 A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the general meeting on that Member's behalf.

47.2 A proxy need not be a Member.

47.3 If a Member appoints one proxy, that proxy may, subject to the *Corporations Act 2001* (Cth), vote on a show of hands.

47.4 If a Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half the votes. However, neither proxy may vote on a show of hands.

47.5 A proxy may demand or join in demanding a poll.

47.6 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If an appointment directs the way the proxy is to vote on a particular resolution:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
- (c) if the proxy is the chair - the proxy must vote on a poll and must vote that way; and
- (d) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

47.7 If:

- (a) a Member nominates the chairperson of the meeting as the Member's proxy; or
- (b) the chairperson is to act as proxy under a default appointment according to the terms of the proxy form,

then the person acting as chairperson in respect of an item of business at the meeting must act as proxy under the appointment in respect of that item of business.

## 48. Document appointing proxy

- 48.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the *Corporations Act 2001* (Cth). Unless otherwise resolved the accepted form of proxy is set out in **Schedule 1**.
- 48.2 For the purposes of clause 48.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 48.3 The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director.
- 48.4 A proxy's appointment is valid at an adjourned general meeting.
- 48.5 A proxy or attorney may be appointed for all meetings or for any number of general meetings or for a particular purpose.
- 48.6 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

## 49. Lodgment of proxy

- 49.1 Subject to clause 49.3, the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting or the taking of the poll (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- 49.2 If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be forwarded with the appointment.
- 49.3 The Company receives an appointment of a proxy or attorney or other authority under which it was signed when they are received at:
- (a) the Office;
  - (b) a facsimile number at the Office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of general meeting.

## 50. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless the Company received written notification of the death, mental incapacity, revocation or transfer before the relevant general meeting or adjourned general meeting.

## 51. Representatives of bodies corporate

- 51.1 Any Member that is a body corporate may appoint an individual as its representative as provided by the *Corporations Act 2001* (Cth).
- 51.2 The appointment of a Representative may set out restrictions on the Representative's powers.
- 51.3 The original form of appointment of a Representative, a certified copy of the appointment, or a certificate of the body corporate evidencing the appointment of a Representative is prima facie evidence of a Representative having been appointed.
- 51.4 The chairperson of a general meeting may permit a person claiming to be a Representative to exercise the body's powers even if he or she has not produced a certificate or other satisfactory evidence of his or her appointment.

## Appointment and removal of Directors

### 52. Number of Directors

- 52.1 Subject to the *Corporations Act 2001* (Cth), the Company may by resolution passed at a general meeting amend the number of Directors.
- 52.2 Until the Company resolves otherwise in accordance with clause 52.1 there will be 10 Directors.
- 52.3 Subject to clause 56, the composition of the board of the Company will include:
  - (a) not less than four Supplier Directors; and
  - (b) not more than one Executive Director (who will be appointed by the Directors and who will, except as otherwise determined by the Directors, be the Managing Director).
- 52.4 Each Director, except the Managing Director, must be appointed by the Members by resolution passed in general meeting.
- 52.5 The Directors and Secretary in office on the date this Constitution becomes effective, continue in office subject to this Constitution.

### 53. Qualification

- 53.1 Directors are not required to hold any Shares.

- 53.2 In addition to the circumstances which disqualify a person from managing a corporation according to the *Corporations Act 2001* (Cth), no person who has been an insolvent under administration within the previous five years is eligible to become a Director.
- 53.3 A Director (and an Alternate Director when acting as a Director) is entitled to notice of all general meetings and meetings of the holders of any class of Shares.

## 54. Power to remove and appoint

- 54.1 Subject to clauses 52 and 53 and the *Corporations Act 2001* (Cth) in relation to any Supplier Director, the Company may by resolution passed in general meeting:
- (a) remove the Supplier Director; and
  - (b) appoint another person who is a Supplier in the Supplier Director's place.
- 54.2 Subject to clauses 52 and 53 and the *Corporations Act 2001* (Cth) in relation to any other Non Executive Director, the Company may by resolution passed in general meeting:
- (a) remove the Director; and
  - (b) appoint another person to replace the Director.
- 54.3 A person appointed under clauses 54.1 and 54.2 will hold office for the remainder of the term for which the Director replaced would have held office if the Director had not been removed.
- 54.4
- (a) If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
  - (b) The suspended Director may not take any part in the business or affairs of the Company until the suspension has been terminated.
  - (c) Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may consider a motion to remove the Director from office in accordance with clause 54.1 to 54.2 (as applicable).
  - (d) If a motion to remove the Director from office is not carried at the general meeting called to consider the matter, the suspension of the Director is terminated and the Director is reinstated in his or her office.

## 55. Additional and casual Directors

- 55.1 Subject to clauses 52 and 53, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors provided that a casual vacancy created by the retirement of a Director must promptly be filled by the existing Directors appointing a person qualified to be appointed as such under this Constitution.
- 55.2 Unless the Director is an Executive Director and the Listing Rules do not require that Director to be subject to retirement as set out in this clause, a Director appointed under clause 55.1 will hold office until the end of the next annual general meeting of the Company, at which the Director may be re elected but he or she will not be taken into account in determining the number of Directors who must retire by rotation at the meeting in accordance with clause 56.
- 55.3 Subject to clause 52 the Company may at a general meeting at which a Director retires, by ordinary resolution fill the vacated office by electing a person to that office.

## 56. Retirement by rotation

- 56.1 At each annual general meeting, one third of the Directors, or if their number is not a multiple of three then the number nearest to but not exceeding one third of the Directors must retire from office.
- 56.2 The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last election provided that Directors who were elected on the same day may agree among themselves or determine by lot which of them will retire.
- 56.3 A Director must retire from office at the conclusion of the third annual general meeting after he or she was last elected even if such retirement results in more than one third of all Directors retiring from office at that meeting.
- 56.4 A retiring Director remains in office until the end of the meeting and will be eligible to stand for re election at the meeting and may be re elected in accordance with the Constitution.

## 57. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) ceases to be a Director by virtue of the *Corporations Act 2001* (Cth);
- (b) is prohibited by the *Corporations Act 2001* (Cth) from holding office or continuing as a Director;
- (c) is prohibited from holding or is removed from the office of Director by an order made under the *Corporations Act 2001* (Cth);
- (d) cannot fully participate in the management of the Company because of his or her mental incapacity or is a person whose estate is liable to have a person appointed, under the law relating to the administration of estates of persons who through mental or physical infirmity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (e) resigns from his or her office of Director by notice in writing to the Company;
- (f) is removed by a resolution of the Company; or
- (g) ceases to hold any required qualification.

## Remuneration of Directors

### 58. Remuneration of Non Executive Directors

- 58.1 Subject to the Listing Rules, the Directors as a whole (other than the Executive Director, if any, in respect of his or her remuneration related to their employment activities) may be paid or provided remuneration for their services, the total amount or value of which must not exceed an aggregate maximum amount determined from time to time by the Company in general meeting.
- 58.2 The notice calling a general meeting at which it is proposed that Members approve an increase of the aggregate maximum sum must state the amount of the increase and the aggregate maximum sum, and any other matters required by the Listing Rules.

- 58.3 Subject to the Listing Rules, the aggregate maximum sum will be divided among the Non Executive Directors in the proportion and manner as the Directors agree and, in default of agreement, equally and shall be deemed to accrue from day to day.
- 58.4 Non Executive Directors may not be paid a commission on or a percentage of profits or operating revenue.
- 58.5 If a Non Executive Director is required to perform services for the Company which in the opinion of the Directors, are outside the scope of the ordinary duties of a Director, the Company may pay or provide the Director remuneration determined by the Directors which may be either in addition to or instead of the Director's remuneration under clause 58.1. No remuneration may be paid or provided under this clause 58.5 if the effect would be to exceed the aggregate maximum sum of Directors' remuneration determined by the Company in general meeting.
- 58.6 Non Executive Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.
- 58.7 The Company may also pay a premium for a contract insuring a person who is or has been a Non Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the *Corporations Act 2001* (Cth).

## 59. Remuneration of Executive Director

- 59.1 The remuneration of an Executive Director may from time to time be fixed by the Directors. The remuneration may be by way of salary or commission or participation in profits or by all or any of these modes but may not be by commission on, or a percentage of, operating revenue.
- 59.2 The Company may reimburse an Executive Director for his or her expenses properly incurred as a Director or in the course of his or her office.
- 59.3 Except in circumstances prohibited by the *Corporations Act 2001* (Cth), the Company may pay a premium for a contract insuring a person who is or has been an Executive Director against liability incurred by the person as a Director.

## 60. Retirement benefits

- 60.1 The Directors may:
- (a) pay a gratuity, pension or allowance, on retirement or other vacation of office, to or for the benefit of a Director or to his widow or dependants; and
  - (b) make contributions to any fund and pay any premiums for the purchase or provision of any such gratuity, pension or allowance,
- in the circumstances provided in, and subject to the approval of Members if so required by, the *Corporations Act 2001* (Cth) and the Listing Rules.
- 60.2 The Directors may enter into a contract or arrangement with a prospective, present or former Director for the payment of benefits or the making of contributions of the kinds referred to in clause 60.1.
- 60.3 The Directors may establish or support or assist in the establishment or support of funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to the Directors.

# Powers and duties of Directors

## 61. Directors to manage Company

- 61.1 The business of the Company is managed by or under the direction of the Directors who may exercise all powers of the Company that this Constitution, the *Corporations Act 2001* (Cth) or the Listing Rules do not require to be exercised by the Company in general meeting.
- 61.2 Without limiting the generality of clause 61.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company or all or any of its uncalled capital;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 61.3 Subject to the requirements of the Listing Rules, every Director, Associate Director and other agent or officer of the Company must:
- (a) keep secret all aspects of all transactions of the Company, except:
    - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
    - (ii) as required by law; and
    - (iii) when requested to disclose information by the Directors, to the auditors of the Company or a general meeting of the Company; and
  - (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

## Proceedings of Directors

### 62. Directors' meetings

- 62.1 Any Director may and the Secretary must on the request of a Director call a meeting of the Directors.
- 62.2 Subject to clause 62.3, notice of a meeting must be given to each Director not less than 48 hours and may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors (except where otherwise unanimously agreed by the Directors).
- 62.3 It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.
- 62.4 (a) Subject to the *Corporations Act 2001* (Cth), a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.

- (c) A Director who participates in a meeting held in accordance with this clause 62.4 is taken to be present and entitled to vote at the meeting.
  - (d) A Director can only withdraw his or her consent to the means of communication between Directors proposed for a Director's Meeting if the Director does so at least 48 hours before the meeting.
- 62.5 An accidental omission to send a notice of a meeting of Directors to any Director or the non receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- 62.6 Clause 62.4 applies to meetings of Directors' committees as if all committee members were Directors.
- 62.7 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 62.8 A quorum for meetings of Directors may be fixed by the Directors and unless so fixed, is four Directors present. The quorum must be present at all times during the meeting.
- 62.9 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, one or more of the Directors may call a general meeting of Members to deal with the matter.

## 63. Decisions

- 63.1 Questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to the Constitution and the *Corporations Act 2001* (Cth), each Director has one vote.
- 63.2 Subject to the Listing Rules, in the case of an equality of votes, the chairperson does not have a second or casting vote in addition to his or her deliberative vote.
- 63.3 (a) An Alternate Director has one vote for each Director for whom he or she is an alternate.  
(b) If an Alternate Director is a Director, he or she also has a vote as a Director.

## 64. Directors' interests

- 64.1 As required by the *Corporations Act 2001* (Cth), a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company and the Secretary must record all declarations in the minutes of the relevant Directors' meeting.
- 64.2 Subject to the provisions of this clause 64, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) be appointed to and hold any office or place of profit under the Company other than as auditor in the Company; and
  - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 64.3 The fact that a Director holds office as a director, and has fiduciary obligations arising out of that office:

- (a) will not void or render voidable a contract made by a Director with the Company;
- (b) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and
- (c) will not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest.

64.4 A Director may be or become a director or other officer of, or otherwise be interested in:

- (a) any Related Body Corporate; or
- (b) any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

64.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted to do so by the *Corporations Act 2001* (Cth), in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

64.6 A Director must give to the Company such information about the Shares or other securities or other direct or indirect interests in the Company in which the Director has a relevant interest and at the times that the Secretary requires, to enable the Company to comply with any disclosure obligations it has under the *Corporations Act 2001* (Cth) and the Listing Rules.

64.7 A Director's failure to make disclosure under this clause does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

64.8 If the Director does purport to vote in circumstances where clause 64.5 prohibits this, the Director's vote will not be counted.

## 65. Alternate Directors

65.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate. The Executive Director may not appoint an Alternate Director.

65.2 An Alternate Director is entitled to notice of Directors' meetings while he or she is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.

65.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.

- 65.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled in that capacity to any remuneration from the Company.
- 65.5 (a) The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- (b) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- 65.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.
- 65.7 An Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that his or her appointor has such an interest.

## 66. Associate Directors

- 66.1 The Directors may appoint a person to be an Associate Director and may remove a person so appointed, provided that not more than two Associate Directors may be appointed at any time and each term of appointment must not exceed one year.
- 66.2 The Directors may define and limit the duties and powers of Associate Directors and their remuneration for their services as Associate Directors but that remuneration must be by way of a fixed sum and not a commission on, or a percentage of, profits or operating turnover (or any other variable measure) and included for the purposes of clause 58.
- 66.3 A person appointed as an Associate Director is not a Director for any of the purposes of this Constitution, the Listing Rules or of the *Corporations Act 2001* (Cth) and accordingly:
- (a) is not a member of the board of Directors or of any committee of Directors;
- (b) is not entitled to be present at any meeting of the Directors or of any committee of the Directors except at the request of any one or more Directors; and
- (c) if present at such request, may be heard but may not vote or form part of a quorum.

## 67. Remaining Directors

- 67.1 The Directors may act even if there are vacancies on the board.
- 67.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Director or Directors may act only to:
- (a) appoint a Director or Directors; or
- (b) call a general meeting.

## 68. Chairperson

- 68.1 The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office, which must be no longer than one year.
- 68.2 When electing a chairperson, any Director who was at any time in the past been a Chairperson is not precluded from again being the chairperson.

- 68.3 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 68.4 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

## 69. Delegation

- 69.1 (a) The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- (b) The Directors may at any time revoke any delegation of power.
- 69.2 At least one member of each committee of Directors must be a Director.
- 69.3 The committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 69.4 A committee may be authorised by the Directors to sub delegate all or any of the powers for the time being vested in it.
- 69.5 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.
- 69.6 All committees duly formed and in existence at the date of adoption of this Constitution are deemed to have been duly constituted for the purposes of this Constitution.

## 70. Written resolutions

- 70.1 If a majority of the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution set out in the document, then a resolution in those terms is taken to have been passed by the Directors without a meeting. The resolution is passed when the last Director of the majority signs.
- 70.2 For the purposes of clause 70.1, separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- 70.3 Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.
- 70.4 This clause 70 applies to meetings of Directors' committees as if all members of the committee were Directors.
- 70.5 Any document referred to in this clause 70 must be sent to every Director who is entitled to vote on the resolution.

## 71. Validity of acts of Directors

- 71.1 An act done by a Director is effective even if their appointment, or the continuance of their appointment, is invalid because the Company or Director did not comply with this Constitution or any provision of the *Corporations Act 2001* (Cth).
- 71.2 Clause 71.1 does not deal with the question whether an effective act by a Director:
- (a) binds the company in its dealings with other people; or

- (b) makes the company liable to another person.

## 72. Minutes

72.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed in accordance with clause 70;
- (d) all orders made by Directors and Director's committees; and
- (e) all disclosures of interests made in accordance with the *Corporations Act 2001* (Cth) under clause 64.

72.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting, and if so signed will be conclusive evidence of the matters stated in such minutes.

## 73. Appointment of Managing Director and Executive Director

73.1 The Directors may appoint one Director at any time to act as an Executive Director or in some other executive capacity on such terms as they think fit including for a fixed term in accordance with the following:

- (a) an appointment will immediately terminate, without further action, if the person ceases to be an employee of the Company or a wholly owned subsidiary of the Company;
- (b) the person is either a current employee of, or proposes to commence employment with (including where the commencement is conditional on being appointed as a Director), the Company or any Related Body Corporate of the Company.

73.2 The Directors may appoint an Executive Director to the office of Managing Director for any period (but not for life and only while the person remains an Executive Director).

73.3 The Directors may, subject to the terms of a Managing Director's or Executive Director's employment contract, suspend, remove or dismiss him or her from that office and appoint another Director in that place.

73.4 If a Managing Director or Executive Director ceases to be a Director, his or her appointment as Managing Director or Executive Director terminates automatically.

73.5 If a Managing Director or Executive Director is suspended from office, he or she will not be entitled to attend or vote at any meeting of Directors.

73.6 A Managing Director:

- (a) is not subject to the retirement provisions applicable to other Directors; and
- (b) is subject to the same provisions as to resignation and removal as the other Directors.

## 74. Powers of Managing Director and Executive Director

74.1 The Directors may confer on a Managing Director or Executive Director any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.

- 74.2 The Managing Director or other Executive Director is authorised to sub delegate all or any of the powers vested in them.
- 74.3 Any power conferred under this clause may be concurrent with or to the exclusion of the Directors' powers.
- 74.4 The Directors may at any time withdraw or vary any of the powers conferred on a Managing Director or Executive Director.

## Local management

### 75. General

- 75.1 The Directors may provide for the management and transaction of the affairs of the Company in any place and in such manner as they think fit.
- 75.2 Without limiting clause 75.1, the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
  - (b) delegate to any person appointed under paragraph (a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,
- on any terms and subject to any conditions determined by the Directors.
- 75.3 The Directors may at any time revoke or vary any delegation under this clause 75.

### 76. Appointment of attorneys and agents

- 76.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the *Corporations Act 2001* (Cth) appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions,
- determined by the Directors.
- 76.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 76.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

- 76.4 An attorney or agent appointed under this clause 76 may be authorised by the Directors to sub delegate all or any of the powers authorities and discretions for the time being vested in it.
- 76.5 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for or on behalf of the Company.

## Secretary

### 77. Secretary

- 77.1 There must be at least one Secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 77.2 The Secretary is entitled to attend all Directors' and general meetings.
- 77.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## Seals

### 78. Common Seal

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) it must not be used except with the authority of the Directors or a Directors' committee authorised to permit use of the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
- (d) the Directors may determine by resolution either generally or in any particular case that the signature of any Director or the Secretary to a document to which the Seal or a duplicate seal or certificate seal is affixed may be a facsimile applied to the document by specified mechanical means.

### 79. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words **Duplicate Seal**; and
- (b) must only be used with the authority of the Directors or a Directors' committee.

### 80. Share Seal

If the Company has a Seal, the Company may have a certificate seal which:

- (a) may be affixed to Share, option or other certificates;

- (b) must be a facsimile of the Seal with the addition on its face of the words **Share Seal** or **Certificate Seal**; and
- (c) must only be used with the general or specific authority of the Directors or a Directors' committee.

## Inspection of records

### 81. Times for inspection

- 81.1 Except as otherwise required by the *Corporations Act 2001* (Cth), the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 81.2 A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## Dividends and reserves

### 82. Dividends

- 82.1 The Directors may by resolution authorise the Company to pay:
  - (a) an interim dividend which is payable on the date fixed by the Directors; and
  - (b) a final dividend which is payable on the date fixed by the Directors.
- 82.2 Subject to the *Corporations Act 2001* (Cth), the Directors may amend or revoke a resolution to pay a dividend at any time before the date fixed for payment.

### 83. Amend resolution to pay dividend

If the Directors determine that a dividend is payable under clause 82.1, they may, if permitted by the Listing Rules, amend or revoke the resolution to pay the dividend before the record date for determining entitlements to that dividend.

### 84. No interest

Interest is not payable by the Company on a dividend.

### 85. Reserves

- 85.1 The Directors may set aside out of profits such amounts by way of reserves as they think appropriate before declaring a dividend or determining to pay a dividend.
- 85.2 The Directors may apply the reserves for any purpose for which profits may be properly applied.
- 85.3 Pending any application of the reserves, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.
- 85.4 The Directors may carry forward any undistributed profits without transferring them to a reserve.

## 86. Dividend entitlement

- 86.1 Subject to the rights of persons (if any) entitled to Shares with special rights as to dividend, any dividend must be paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid.
- 86.2 All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but, if a Share is issued on terms providing that it will rank for dividend as from a particular date, that Share ranks for dividend accordingly.
- 86.3 An amount paid or credited as paid on a Share in advance of a call is not to be taken as paid or credited as paid for the purposes of clauses 86.1 and 86.2.
- 86.4 A transfer of Shares does not pass the right to any dividend declared or determined to be payable in respect of those Shares before the registration of a transfer.
- 86.5 Subject to the *Corporations Act 2001* (Cth) and the SCH Business Rules, a transfer of Shares registered after the record date notified to ASX or other Prescribed Financial Market, as relevant, for determining entitlements to a dividend paid or payable in respect of the transferred Shares, does not pass the right to that dividend.

## 87. Restricted securities

During a breach of the Listing Rules relating to Shares which are Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to any dividend in respect of those Restricted Securities.

## 88. Deductions from dividends

The Directors may deduct from a dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

## 89. Distribution of assets

- 89.1 The Directors may resolve that a dividend (interim or final) will be paid wholly or partly by the transfer or distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.
- 89.2 If a difficulty arises in making a transfer or distribution of specific assets, the Directors may:
- (a) deal with the difficulty as they consider expedient;
  - (b) fix the value of all or any part of the specific assets for the purposes of the distribution;
  - (c) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
  - (d) vest any such specific assets in trustees as the Directors consider expedient.
- 89.3 If a transfer or distribution of specific assets to a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the transfer or distribution of specific assets.

## 90. Payment

90.1 Any dividend or other money payable in respect of Shares may be paid:

- (a) by cheque sent through the mail directed to:
  - (i) by the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
  - (ii) by an address which the Member has, or joint holders have, in writing notified the Company as the address to which dividends should be sent;
- (b) by electronic funds transfer to an account with a bank or other financial institution nominated by the Member and acceptable to the Company; or
- (c) by any other means determined by the Directors.

90.2 Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

## 91. Capitalisation of profits

91.1 The Directors may resolve:

- (a) to capitalise profits and apply the sum capitalised; and
- (b) that the sum be applied, in any of the ways mentioned in clause 91.2, for the benefit of Members, or persons who have applied for Shares, in the proportions determined by the Directors.

91.2 The ways in which a sum may be applied for the benefit of Members under clause 91.1 are:

- (a) in paying up any amounts unpaid on Shares held or to be held by Members;
- (b) in paying up in full Shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 91.2(a) and partly as mentioned in clause 91.2(b)

91.3 The Directors must do all things necessary to give effect to a resolution under clause 91.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where Shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all the Members entitled to a benefit on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any such further Shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amount or any part of the amount remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under the authority of clause 91.3(b) is effective and binding on all the Members concerned.

## 92. Election to accept Shares instead of dividend

- 92.1 The Directors may resolve, in respect of any dividend which it is proposed to pay on any Shares, that holders of those Shares may elect to:
- (a) forego their right to share in the proposed dividend or part of the proposed dividend; and
  - (b) instead receive an issue of Shares credited as fully paid.
- 92.2 If the Directors resolve to allow the election provided for in clause 92.1, each holder of Shares conferring a right to share in the proposed dividend may, by notice in writing to the Company given in the form and within the period as the Directors may decide, elect to:
- (a) forego the dividend which otherwise would have been paid to the holder on such of the holder's Shares conferring a right to share in the proposed dividend as the holder specifies in the notice of election; and
  - (b) receive instead Shares to be issued to the holder credited as full paid, on and subject to terms and conditions as the Directors may determine.
- 92.3 Following the receipt of duly completed notices of election under clause 92.2, the Directors must:
- (a) appropriate from the Company's profits or any reserve available for distribution to Members an amount equal to the aggregate issue price (if any) of the Shares to be issued credited as fully paid to those holders of Share who have given notices of election; and
  - (b) apply the amount (if any) in paying up in full the number of Shares required to be so issued.
- 92.4 The Directors may rescind, vary or suspend a resolution of the Directors made under clause 92.1 and the arrangements implemented under the resolution.
- 92.5 The powers given to the Directors by this clause 92 are additional to the provisions for capitalisation of profits provided for by this Constitution. If the Directors exercise their power to capitalise profits under clause 91 then any Member who has elected to participate in arrangements established under this clause 92 is deemed, for the purpose of determining the Member's entitlement to share in the capitalised sum, not to have so elected.

## Notices

### 93. Service of notices

- 93.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
- (a) serving it on the person;
  - (b) sending it by post, courier, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person; or
  - (c) if the notice is to a Member and the Member has no registered address, posting it on the notice board at the Office.
- 93.2 A notice sent by post or courier is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.

- 93.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its dispatch.
- 93.4 A notice posted on a notice board is taken to be served 24 hours after it is posted on the board.
- 93.5 A notice may be served by the Company on joint holders by giving the notice to the joint holder whose name appears first in the Register.
- 93.6 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this clause by advertisement or on that person from whom the first person derives title.
- 93.7 A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:
- (a) in the case of a Member who does not have a Registered Address in Australia, by airmail post; and
  - (b) in any other case by ordinary post,
- and is at the risk of the addressee as soon as it is given or posted.
- 93.8 A Member whose Registered Address is not in Australia may specify in writing an address in Australia as the Member's Registered Address within the meaning of this clause.
- 93.9 A certificate in writing signed by a Director, Secretary or other officer of the Company, that a document or its envelope or wrapper was addressed and stamped and was posted or given to a courier is conclusive evidence of posting or delivery by courier.
- 93.10 Subject to the *Corporations Act 2001* (Cth) the signature to a written notice given by the Company may be written or printed.
- 93.11 All notices sent by post outside Australia must be sent by prepaid airmail post.
- 93.12 A notice sent by post, courier, facsimile transmission or electronic notification to a Member's address shown in the Register or the address supplied by the Member to the Company for the purpose of sending notices to the Member is deemed to have been served notwithstanding that the Member has died, whether or not the Company has notice of his or her death.
- 93.13 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 94. Persons entitled to notice

- 94.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director and Alternate Director;
  - (c) if the Company is Listed and it is required under the Listing Rules, ASX or other Prescribed Financial Market (as applicable); and
  - (d) the Auditor.
- 94.2 No other person is entitled to receive notice of a general meeting.

# Audit and financial records

## 95. Company to keep financial records

- 95.1 The Directors must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the requirements of the *Corporations Act 2001* (Cth) and the Listing Rules.
- 95.2 The Directors must cause the financial records and financial documents of the Company to be audited in accordance with the requirements of the *Corporations Act 2001* (Cth) and the Listing Rules.

# Winding up

## 96. Winding up

- 96.1 Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.
- 96.2 If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:
- (a) divide among the Members in kind all or any of the Company's assets; and
  - (b) for that purpose, determine how he or she will carry out the division between the different classes of Members,
- but may not require a Member to accept any Shares or other securities in respect of which there is any liability.
- 96.3 The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

# Indemnity

## 97. Indemnity

- 97.1 To the extent permitted by law and subject to the restrictions in section 199A of the *Corporations Act 2001* (Cth), the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 97.2 To the extent permitted by law and subject to the restrictions in section 199A of the *Corporations Act 2001* (Cth), the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 97.3 The amount of any indemnity payable under clauses 97.1 or 97.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified**

**Officer**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

97.4 The Directors may agree to advance to an officer an amount which it might otherwise be liable to pay to the officer under clause 97.2 on such terms as the Directors' think fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the officer under clause 97.2. If after the Company makes the advance, the Directors form the view that the Company is not liable to indemnify the officer, the Company may recover any advance from the officer as a debt due by the officer to the Company.

97.5 For the purposes of this clause 97, **officer** has the meaning set out in the *Corporations Act 2001 (Cth)* and includes:

- (a) a Director or Associate Director; and
- (b) a Secretary.

## 98. Shareholder disclosure

If a Member has entered into any arrangement restricting the transfer or other disposal of Shares and those arrangements are of the nature of arrangements which the Company is required to disclose under the Listing Rules, then the Member must provide to the Company such information that the Company requires and within the time that the Company requires, to comply with the Company's disclosure obligations.

# Schedule 1 - Form of proxy

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## WARRNAMBOOL CHEESE AND BUTTER FACTORY

### COMPANY HOLDINGS LIMITED

ACN 071 945 232

## PROXY FORM – GENERAL MEETING

The Secretary

Warrnambool Cheese and Butter Factory Company Holdings Limited

Great Ocean Road, ALLANSFORD VIC 3277

I/We .....

(please print)

of .....

(please print)

being a Member(s) of Warrnambool Cheese and Butter Factory Company Holdings Limited appoint:

Name of Proxy .....

Address of Proxy .....

or, in his/her absence:

Name of Proxy .....

Address of Proxy .....

or, if I/we have not nominated a proxy or if the nominee is absent from the meeting, the chairperson of the meeting as my/our proxy to vote on my/our behalf at the general meeting of Warrnambool Cheese and Butter Factory Company Holdings Limited to be held on ..... at ..... am/pm and at any adjournment of that meeting.

**If two proxies are being appointed, complete the following sentence:** This proxy is authorised to exercise ..... votes/ ..... % of my/our total voting rights.

### Proxy instructions

*To instruct your proxy how to vote, insert 'X' in the appropriate column against each item of business set out below. If you do not instruct your proxy how to vote on a resolution, your proxy may vote as he/she thinks fit or abstain from voting.*

I/We instruct my/our proxy to vote as follows:

	For	Against	Abstain
Resolution:	G	G	G

*This proxy must be signed by each appointing Member or the Member's attorney. Proxies given by companies must be executed in accordance with section 127 of the Corporations Act 2001 (Cth) or signed by an authorised officer or Attorney.*

Dated: .....

COMMON SEAL	SIGNATURE(S)	NAME (print)

This proxy and any power of attorney or other authority under which it is signed (or a certified copy) must be lodged at:

- (a) the registered office of Warrnambool Cheese and Butter Factory Company Holdings Limited;
- (b) a facsimile number at the registered office of Warrnambool Cheese and Butter Factory Company Holdings Limited; or
- (c) the place, facsimile number or electronic address specified for this purpose in the notice of meeting by [time] on [date], being at least 48 hours before the meeting.

Notes:

- 1. A Member who is entitled to vote at the meeting may appoint:
  - (a) one proxy if the Member is only entitled to one vote; or
  - (b) one or two proxies if the Member is entitled to more than one vote.
- 2. Where the Member appoints two proxies, the appointment may specify the proportion or number of votes that each proxy may exercise. If the appointment does not specify a proportion or number, each proxy may exercise half of the votes in which case any fraction of votes will be disregarded.
- 3. If you require an additional proxy form, the company will supply it on request.
- 4. A proxy need not be a Member of the company.