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THE COMPANIES ACTS 1985 TO 1989

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PRIVATE COMPANY LIMITED BY SHARES

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NEW

ARTICLES OF ASSOCIATION

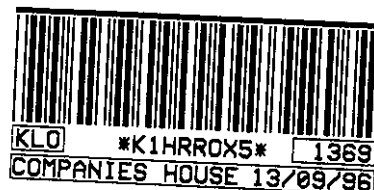
-OF-

PIRTEK EUROPE LIMITED

(ADOPTED BY SPECIAL RESOLUTION PASSED ON 10 September 1996)

TRAVERS SMITH BRAITHWAITE  
10 SNOW HILL  
LONDON EC1A 2AL

TEL: 0171-248 9133



## PRELIMINARY

1.1 The regulations contained or incorporated in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 ("**Regulations**") shall apply to the Company save insofar as they are excluded or modified by or are inconsistent with the regulations hereinafter contained and the regulations contained in Table A and the regulations herein contained shall be the articles of association of the Company ("**Articles**").

1.2 The whole of Regulations 2, 24, 25, 40, 41, 46, 50, 51, 52, 54, 64, 65, 73, 74, 75, 80, 82, 87, 89, 96, 101 and 118, the third sentence of Regulation 88 and the last sentence of Regulation 112 of Table A shall not apply to the Company.

## DEFINITIONS AND INTERPRETATION

2.1 In these Articles the following expressions shall have the following meanings:-

<b>Accounts</b>	the audited profit and loss account of the Company or, if at the relevant time the Company has any subsidiary undertaking(s), a consolidation of the audited profit and loss accounts of the Company and its subsidiary undertaking(s), for each financial year, to be prepared under the historical cost convention and in accordance with generally accepted accounting principles and all relevant Statements of Standard Accounting Practice, Financial Reporting Standards and Statements of Recommended Practice;
<b>Australian Shareholders</b>	PB Duncan Pty Limited and W.G. Davey Pty Limited;
<b>Act</b>	the Companies Act 1985;
<b>Annual Budget</b>	the operating budget (including a cash flow and expenditure forecast) for the Group in respect of each financial year of the Group which has been approved by the Preferred Ordinary Shareholders;
<b>Auditors</b>	the auditors of the Company from time to time;
<b>Available Profits</b>	profits available for distribution within the meaning of the Act;
<b>Board</b>	the board of directors of the Company (or any duly authorised committee thereof) from time to time;
<b>Borrowings</b>	<p>all monies borrowed or raised by members of the Group (excluding loans from shareholders) and, to the extent not otherwise taken into account, also:-</p> <p>(a) all amounts of any third party indebtedness (excluding intra-group liabilities) for the time being the subject of a</p>

guarantee or indemnity given by, or any other form of analogous comfort enforceable against, any Group Company, in favour of any other person;

(b) the outstanding amount raised by acceptances by any bank or accepting house under any acceptance credit opened on behalf of and in favour of a Group Company;

(c) the principal amount of any debenture (whether secured or unsecured) of any Group Company owed otherwise than to any other Group Company;

(d) the amount payable on redemption of any preference share capital of any subsidiary, save to the extent that such preference share capital is owned by a Group Company;

(e) any premium payable on final repayment of any borrowing or deemed borrowing; and

(f) the aggregate liabilities (whether presently payable or arising in the future) arising under all credit sale, hire purchase and any other agreements of Group Companies providing for payment on deferred terms but excluding normal trade credit arising in the ordinary course of business (which shall include, without limitation, arrangements whereby, in the normal course of trading, goods are supplied to members of the Group subject to retention of title);

**Business Day**

a weekday, other than a Saturday, on which clearing banks are ordinarily open for business in the City of London;

**Business Plan**

the business plan of May 1996 supplied by F. Petrie, P. Brennan, P. Duncan and W. Davey to NatWest Ventures Limited;

**Compulsory Purchase Notice**

a notice served pursuant to Article 13.1.1;

**Conversion Date**

the date on which a Conversion Event occurs;

**Conversion Event**

any one of the following events:-

(a) the obtaining of a Quotation; or

(b) the entering into of an unconditional agreement or agreements for a Sale; or

(c) where an agreement or agreements for a Sale is or are conditional in any respect, that agreement or those

agreements (as the case may be) becoming unconditional in all respects;

<b>Cumulative Dividends</b>	the Preference Dividend and the Participating Dividend;
<b>Deferred Shares</b>	the Deferred Shares of £1 each in the capital of the Company;
<b>Good Leaver</b>	shall have the meaning given in Article 13.6;
<b>Group</b>	the Company and its subsidiary undertaking(s) (if any) from time to time and references to Group Company and members of the Group shall be construed accordingly;
<b>Investor</b>	each of NatWest Ventures Nominees Limited and Phoenix Group Limited and any person to whom any Preferred Ordinary Shares or Preference Shares are transferred in accordance with the provisions of these Articles of Association and, where any such shares are held by a bare nominee for a person, in respect of those shares, that person shall be the " <b>Investor</b> " for these purposes;
<b>Investor Associate</b>	each member of the Investor's Investor Group (other than the Investor itself) and any company, fund (including any unit trust or investment trust) or partnership which is advised or the assets of which are managed (whether solely or jointly with others) from time to time by the Investor or any member of its Investor Group;
<b>Investor Consent</b>	shall have the meaning given in Article 2.7;
<b>Investor Group</b>	an Investor and its wholly-owned subsidiaries or, as the case may be, an Investor, the company of which the Investor is a wholly-owned subsidiary and any other wholly-owned subsidiary of such holding company;
<b>Issue Price</b>	the price per share at which the relevant shares are issued being the aggregate of the amount paid up or credited as paid up in respect of the nominal value thereof and any share premium thereon;
<b>Lead Investor</b>	NatWest Ventures (Nominees) Limited;
<b>Leaver</b>	(a) any person who was an employee and/or a director (other than a Nominated Director and Mr P B Duncan and Mr W G Davey) of any company within the Group who has ceased (for any reason other than death) to hold such employment and/or office in all companies within the Group and any Related Person of such person who holds shares in the Company;

(b) any person who holds shares in the Company who at any time ceases (for whatever reason) to be a Related Person of an Original Participant;

(c) any person who on the death of a member of the Company becomes entitled to any share in the Company and who is not a Related Person;

(d) any person who becomes entitled to any share in the Company on the bankruptcy of a member of the Company (if an individual) or the receivership, administrative receivership, administration, liquidation or other arrangement for the winding-up (whether solvent or insolvent) of a member (if a company);

<b>Leaving Date</b>	the date on which any person becomes a Leaver;
<b>Leaver's Shares</b>	all of the shares in the Company held by a Leaver, or to which the Leaver is entitled, on the Leaving Date;
<b>Loan Notes</b>	up to £8,800,000 unsecured 8% Loan Notes of the Company;
<b>London Stock Exchange</b>	London Stock Exchange Limited;
<b>Nominated Director</b>	shall have the meaning given in Article 17.1;
<b>Ordinary Shares</b>	the "A" and "B" Ordinary Shares together;
<b>"A" Ordinary Shares</b>	the ordinary shares of £1 each in the capital of the Company which are not convertible;
<b>"B" Ordinary Shares</b>	the ordinary shares of £1 each in the capital of the Company convertible into "A" Ordinary Shares and Deferred Shares upon a Conversion Event;
<b>Original Participant</b>	each of:-  (a) F. Petrie and P. Brennan;  (b) any individual, being an employee and/or director of a Group Company who subscribes for any Ordinary Shares; and  (c) any individual, being an employee and/or director of a Group Company to whom any Ordinary Shares are transferred in circumstances where an Investor Consent has been given to such person being treated as an Original Participant;
<b>Participating Dividend</b>	the dividend payable pursuant to Article 4.1.2;

<b>Preference Dividend</b>	the dividend payable pursuant to Article 4.1.1;
<b>Preference Shares</b>	the cumulative redeemable preference shares of 1 penny each in the capital of the Company;
<b>Preferred Ordinary Shares</b>	the convertible cumulative participating preferred ordinary shares of £1 each in the capital of the Company;
<b>Profit after Tax</b>	<p>the amount of the profit/(loss) of the Group for the financial year in question (as disclosed by the Accounts):-</p> <p>(a) before any provision or reserve shall have been made for or in respect of:-</p> <ul style="list-style-type: none"><li>(i) the payment of any dividend or other distribution on or in respect of any share in the capital of the Company or the transfer of any sum to reserves;</li><li>(ii) the amortisation or writing off of goodwill arising on consolidation; and</li><li>(iii) the redemption of the Preference Shares;</li></ul> <p>(b) after provision shall have been made for corporation tax (or any other tax levied upon or measured by reference to profits) on the profits earned by the Group;</p> <p>and the certificate of the Auditors (acting as experts and not as arbitrators) as to the amount of the Profit after Tax in any financial year shall (except in the case of manifest error) be conclusive, final and binding on the Company and the members of the Company;</p>
<b>Quotation</b>	the admission of the whole of any class of the issued share capital of the Company to the Official List of the London Stock Exchange or to trading on the Alternative Investment Market of the London Stock Exchange or to any other recognised investment exchange (as defined in section 207 of the Financial Services Act 1986);
<b>Related Persons</b>	in relation to an Original Participant, any one or more of his spouse, child, step-child or remoter issue or the trustees of any trust the beneficiaries of which are the Original Participant and/or his spouse, child, step-child or remoter issue (notwithstanding one or more charities may be named as residuary beneficiaries of that trust);
<b>Sale</b>	the sale of the whole of the issued equity share capital of the Company to a single purchaser or to one or more purchasers

as part of a single transaction;

**Transfer Notice**

as defined in Article 11.1;

**UK Shareholders**

F. Petrie, P. Brennan and any permitted transferee(s) pursuant to Article 12.8 12.9 and 12.10 of any of the Ordinary Shares held by either of them.

2.2 The terms "**subsidiary**", "**subsidiary undertaking**", "**wholly-owned subsidiary**", "**parent undertaking**", "**holding company**", "**associated company**", "**financial year**", "**director**", "**body corporate**" and "**equity share capital**" shall have the meanings respectively attributed to them at the date of the adoption of these Articles by the Act and the term "**connected person**" shall have the meaning attributed to it at the date of the adoption of these Articles, section 839 Income and Corporation Taxes Act 1988 and the words "**connected with**" shall be construed accordingly. The term "**acting in concert**" shall have the meaning attributed to it at the date of adoption of these Articles by the City Code on Takeovers and Mergers.

2.3 A reference to any statutory provision in these Articles:-

2.3.1 includes any order, instrument, plan, regulation, permission and direction made or issued under such statutory provision or deriving validity from it; and

2.3.2 shall be construed as a reference to such statutory provision as in force at the date of adoption of these Articles (including, for the avoidance of doubt, any amendments made to such statutory provision that are in force at the date of the adoption of these Articles); and

2.3.3 shall also be construed as a reference to any statutory provision of which such statutory provision is a re-enactment or consolidation; and

2.3.4 shall also be construed as a reference to any later statutory provision which re-enacts or consolidates such statutory provision.

2.4 References in these Articles to:-

2.4.1 any of the masculine, feminine and neuter genders shall (where appropriate) include other genders;

2.4.2 the singular shall (where appropriate) include the plural and vice versa;

2.4.3 a person shall (where appropriate) include a reference to any natural person, body corporate, unincorporated association, partnership, fund and trust;

2.4.4 "**from time to time**" shall include the expression "**for the time being**" and shall mean from the time of adoption of these Articles up until the present time.

2.5 The headings in these Articles are for convenience only and shall not affect their

meaning.

2.6 A reference in these Articles to any transfer of any share in the Company shall mean the transfer of either or both of the legal and beneficial ownership in such share and/or the grant of an option to acquire either or both of the legal and beneficial ownership in such share and the following shall be deemed (but without limitation) to be a transfer of a share in the Company:-

2.6.1 any direction (by way of renunciation or otherwise) by a member entitled to an allotment or issue of any share that such share be allotted or issued to some person other than himself;

2.6.2 any sale or other disposition of any legal or equitable interest in a share (including any voting right attached thereto) and whether or not by the registered holder thereof and whether or not for consideration or otherwise and whether or not effected by an instrument in writing; and

2.6.3 any grant of a legal or equitable mortgage or charge over any share.

2.7 A reference in these Articles to any class of shareholder giving written directions, written consent or written notice shall mean the giving of such directions, consent or notice by the holders for the time being of not less than 75 per cent. in nominal value of such class of shares then in issue and, for so long as there is a Lead Investor or a Nominated Director, any such directions, consent or notice given or required to be given by or on behalf of the holders of either the Preference Shares (as a class) or the Preferred Ordinary Shares (as a class) and any such directions, consent or notice given or required to be given by or on behalf of the Investors (referred to as an "**Investor Consent**") shall (in each case) be validly given if given by the Lead Investor or by the Nominated Director.

2.8 In construing these Articles, general words introduced by the word "**other**" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

### **SHARE CAPITAL**

3. The authorised share capital of the Company at the date of the adoption of these Articles is £371,000 divided into 2,100,000 Preference Shares, 150,000 Preferred Ordinary Shares, 100,000 "A" Ordinary Shares, 50,000 "B" Ordinary Shares and 50,000 Deferred Shares.

### **DIVIDEND RIGHTS**

4. The rights and restrictions as regards income attaching to the Preference Shares, the Preferred Ordinary Shares, the Ordinary Shares and the Deferred Shares shall be as set out in this Article 4.

4.1 The Company shall, without resolution of the Board or of the Company in general



meeting and before application of any profits to reserve or for any other purpose:-

4.1.1 first, pay in respect of each Preference Share, a fixed cumulative preferential dividend at the annual rate of 8 per cent. of the Issue Price per share (net of any associated tax credit) which shall be paid in two equal instalments on 30 June and 31 December in each year to the person registered as the holder of such share at that date and which shall be calculated in respect of the period to such date on a daily basis assuming a 365 day year ("**Preference Dividend**"). The first payment shall be on 31 December 1997 for the period from 31 July 1997 to 31 December 1997 and no Preference Dividend shall accrue or be payable in respect of any period prior to 31st July 1997;

4.1.2 second, in relation to each financial year of the Company commencing on or after 31 March 2001, pay in respect of the issued Preferred Ordinary Shares (as a class) an aggregate cumulative preferential dividend equal to 20 per cent. of the Profit after Tax for such financial year ("**Participating Dividend**").

The Participating Dividend (if any) shall be payable (without resolution of the Board or of the Company in general meeting) on the third Business Day after the date of the Auditor's report relating to the Accounts for the relevant financial year and shall be payable to and apportioned among the holders of Preferred Ordinary Shares according to the number of such shares held by them respectively. Save as aforesaid, the holders of Preference Shares shall not be entitled to any further or other right of participation in the profits of the Company.

4.2 Each Cumulative Dividend shall, provided the Company has sufficient Available Profits out of which to pay the same and notwithstanding that such dividend is expressed to be cumulative, automatically become a debt due from and immediately payable by the Company on the relevant payment date specified in Article 4.1 and such debt shall bear interest at the annual rate of 2 per cent. above the base rate of National Westminster Bank plc, calculated on a daily basis over a 365 day year from and including such due date to the actual date of payment and compounded at the end of each calendar month.

4.3 The Preference Dividend shall be deemed to accrue from day to day as well after as before the commencement of a winding-up and shall therefore be payable by a liquidator in respect of any period after such commencement in priority to other claims or rights of members in respect of share capital.

4.4 If the Company is unable to pay the Cumulative Dividends, or any of them, in full on the due date by reason of having insufficient Available Profits, then it shall on such date pay the same (to the extent that it is lawfully able to do so) and the shortfall (which shall be increased by an amount equal to the interest that could have been earned on the shortfall amount at the annual rate of 1 per cent. above the base rate of National Westminster Bank plc (calculated on a daily basis over a 365 day year from and including such due date to the actual date of payment and compounded at the end of each calendar month)) shall be paid by the Company as soon thereafter as, and to the extent that, Available Profits have arisen in the following order of priority:-

4.4.1 first, in or towards paying off all accrued and/or the unpaid Preference

Dividend including any shortfall;

4.4.2 second, in or towards redeeming all Preference Shares which have not been redeemed on or by the due date for redemption specified in Article 8.1.1;

4.4.3 third, in or towards paying off all accrued and/or unpaid the Participating Dividend.

A reference in these Articles to unpaid dividends (Participating or Preference) shall be deemed to include all amounts representing interest that could have been earned on the unpaid amount of such dividends.

4.5 Subject to Article 4.4, to the Board recommending payment of the same and to the consent of the Preferred Ordinary Shareholders any further Available Profits which the Company may determine to distribute in respect of any financial year after having paid the Preference and Participating Dividends shall be distributed amongst the holders of the Ordinary and Preferred Ordinary Shares (pari passu as if the same constituted one class of share) according to the amount paid up or credited as paid up on each such share or, following conversion of the Preferred Ordinary Shares pursuant to Article 7, amongst the holders of the Ordinary Shares according to the number of such shares held by them respectively.

4.6 The Company shall procure that each of its subsidiaries and (so far as it is able) each of its subsidiary undertakings which has Available Profits shall from time to time declare and pay to the Company (or, as the case may be, the relevant Group Company that is its immediate holding company or parent undertaking) such dividends as are necessary to permit lawful and prompt payment by the Company of the Cumulative Dividends (including any unpaid Cumulative Dividend).

4.7 For so long as there are Preferred Ordinary Shares in issue, the Company shall require the Auditors at the Company's expense to prepare a certificate as to the Profit after Tax for each financial year of the Company commencing on or after 31 March 2001 at the same time as the Accounts for that year are being audited and the Company shall cause a copy of such certificate to be delivered with the Accounts for the relevant financial year to every holder of Preferred Ordinary Shares.

4.8 The holders of the Deferred Shares shall have no right to receive any dividend or other distribution.

4.9 In Regulation 103, the words from "If the share capital is divided" to the end of the Regulation shall be deleted.

#### **RIGHTS ON RETURN OF CAPITAL**

5. On a return of capital on liquidation or otherwise (except on the redemption of shares of any class or the purchase by the Company of its own shares), the surplus assets of the Company remaining after the payment of its liabilities (including for the avoidance of doubt any amounts arising from non-payment of Cumulative Dividends) shall be applied in the following order of priority:-

5.1 first, in paying to each holder of Preference Shares in respect of each Preference Share of which it is the holder, a sum equal to the aggregate of (1) the Issue Price therefor, and (2) the aggregate amount of any accrued and/or unpaid Preference Dividend (to be calculated down to and including the date of the return of capital and to be payable irrespective of whether such dividend would be unlawful by reason of there being insufficient Available Profits);

5.2 second, in paying to each holder of Preferred Ordinary Shares in respect of each Preferred Ordinary Share of which it is the holder, a sum equal to any accrued and/or unpaid Participating Dividend (to be calculated down to and including the date of the return of capital and to be payable irrespective of whether such dividend would be unlawful by reason of there being insufficient Available Profits);

5.3 third, in paying to each holder of Ordinary Shares and Preferred Ordinary Shares in respect of each such share of which it is the holder, a sum equal to the Issue Price therefor together with the sum of £10,000 per share; and

5.4 fourth, in paying to each holder of Deferred Shares in respect of each such share of which it is the holder, a sum equal to the Issue Price therefor; and

5.5 the balance of such assets (if any) shall be distributed amongst the holders of the Preferred Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of share) according to the amount paid up or credited as paid up on such shares held by them respectively.

### **VOTING RIGHTS**

6.1 At all times when the Preference Shareholders are not entitled to vote at general meetings of the Company pursuant to the provisions of Article 6.5, the Preferred Ordinary Shareholders as a class shall be entitled to 49 per cent., and the Ordinary Shareholders as a class shall be entitled to 51 per cent., of the votes cast on a poll at any general meeting unless at the date fixed for the meeting in question:-

6.1.1 the profits of the Company's subsidiary Pirtek (UK) Limited, have fallen below 80 per cent. of the level forecast in the Business Plan for two consecutive quarterly periods;

6.1.2 the aggregate losses of the Group (excluding Pirtek (UK) Limited) in any quarterly period being £100,000 or more in excess of the losses projected in the Annual Budget; or

6.1.3 seven years have elapsed since the date of adoption of these Articles and the Company has not achieved a Quotation or been the subject of a Sale.

in which case the Preferred Ordinary Shareholders as a class shall be entitled to 60 per cent., and the Ordinary Shareholders as a class to 40 per cent., of the votes cast on a poll at that general meeting. In the circumstances of Article 6.1.3, the reduction in voting power of the Ordinary Shares shall be permanent. In the case of Article 6.1.1, the reduction shall continue only so long as the circumstances contained therein subsist. In

the case of Article 6.1.2, the reduction shall continue until it becomes apparent to the Investors acting reasonably that the losses for a quarterly period are the same or less than those projected for that quarterly period in the Annual Budget.

6.2.1 In the circumstances described in Article 6.1, as between the holders of the Preferred Ordinary Shares then in issue, the number of votes to which they as a class shall be entitled shall be apportioned between each of holder thereof (as nearly as practicable) pro rata according to the number of Preferred Ordinary Shares held by each holder at the date of the relevant general meeting.

6.2.2 In the circumstances described in Article 6.1, as between the holders of the Ordinary Shares then in issue, the number of votes to which they as a class shall be entitled shall be apportioned between each holder thereof (as nearly as practicable) pro rata according to the number of Ordinary Shares held by each such holder at the date of the relevant general meeting (excluding any Ordinary Shares the voting rights in respect of which are then disenfranchised pursuant to Article 6.8).

6.3 At all times when the Preference Shareholders are entitled to vote at general meetings pursuant to the provisions of Article 6.5:-

6.3.1 on a show of hands, every member holding one or more Ordinary Shares and every member holding one or more Preferred Ordinary Shares, who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote; and

6.3.2 on a poll, every member holding one or more Ordinary Shares and every member holding one or more Preferred Ordinary Shares, who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote for each Ordinary Share and one vote for each Preferred Ordinary Share of which he is the holder.

6.4 Subject to Article 6.5, the Preference Shares will entitle the holders thereof to receive notice of all general meetings but will not entitle the holders to attend or vote at any general meeting.

6.5 If at any time:-

6.5.1 the Company has failed to pay the Preference Dividend and/or the Participating Dividend (as the case may be) within three months of the due date (irrespective of whether such dividend would be unlawful by reason of the Company having insufficient Available Profits); or

6.5.2 the Company has failed to redeem any Preference Shares within one month of the due date in accordance with the requirements of Article 8.1.1 (irrespective of whether such redemption would be unlawful by reason of the Company having insufficient Available Profits); or

6.5.3 there has been proposed a resolution for the winding up of the Company, a resolution for a reduction in the capital of the Company or a resolution varying any

of the rights attaching to the Preference Shares and/or Preferred Ordinary Shares;  
or

6.5.4 the Company is in material breach of the provisions of these Articles or of any agreement to which it and each of its shareholders is a party; or

6.5.5 the Company and/or its subsidiaries or any of them is in default under the terms on which banking facilities or bank loans have been made available to the Group;

then the Preference Shares shall entitle each holder thereof, on a show of hands, to one vote, and on a poll, to one vote for each Preference Share of which it is the holder provided that the Preference Shares will not be so enfranchised if the circumstances specified in Articles 6.5.1 to 6.5.5 (inclusive) have occurred with the prior written consent of the Preferred Ordinary Shareholders.

6.6 The enfranchisement of the Preference Shares pursuant to Article 6.5 shall:-

6.6.1 in the case of Article 6.5.1, continue until due payment has been made of all accrued and/or unpaid Preference Dividends and/or Participating Dividends (as the case may be);

6.6.2 in the case of Article 6.5.2, continue until the Preference Shares required to be redeemed have been so redeemed;

6.6.3 in the case of Article 6.5.3, only apply in relation to such resolution as is there mentioned; and

6.6.4 in the case of Articles 6.5.4 and 6.5.5, continue for so long as such breach subsists.

6.7 If the enfranchisement provisions contained in Article 6.5 shall apply, they shall enable the holders of the Preferred Ordinary Shares and the holders of the Preference Shares for the time being in issue together:-

6.7.1 to pass written resolutions of the Company pursuant to section 381A of the Act; and

6.7.2 to consent to the holding of a general meeting of the Company on short notice pursuant to section 369(3) of the Act;

in either case, on the basis that all such holders shall be deemed for such purposes to constitute the only members of the Company who would be entitled to attend and vote at a general meeting of the Company.

6.8 If at any time:-

6.8.1 a holder of Ordinary Shares is in material breach of the provisions of these Articles (including a transfer in breach of the provisions of these Articles); or

6.8.2 any holder of Ordinary Shares, or person entitled to Ordinary Shares, becomes a Leaver;

then:-

- (1) the Ordinary Shares of which such member is the holder or to which such person is entitled;
- (2) any Ordinary Shares formerly held by such member which have been transferred either in breach of the provisions of these Articles or in accordance with Article 12 (other than Article 12.7.1 or Article 12.7.2); and
- (3) any Ordinary Shares issued to any person on the basis that such person(s) would have been (a) Permitted Transferee(s) of such member had such shares been issued directly to such member,

shall immediately cease to entitle the holder(s) thereof to voting rights (whether on a show of hands or on a poll and whether exercisable at a general meeting or at a separate class meeting) and such disenfranchisement shall continue, in the case of Article 6.8.1, for so long as such breach subsists and, in the case of Article 6.8.2, until such time as the Leaver or Leaver's Permitted Transferee ceases to be a holder of or entitled to such shares or until the provisions of Article 13 cease to apply, whichever is the sooner.

6.9 The holders of the Deferred Shares shall have no right to receive notice of or to attend or vote at any general meeting of the Company.

#### **CONVERSION**

7. Upon the occurrence of a Conversion Event, each Preferred Ordinary Share and each "B" Ordinary Share shall convert into an "A" Ordinary Share or a Deferred Share in accordance with the provisions of the Schedule.

#### **REDEMPTION RIGHTS**

8.1 The Preference Shares shall be redeemed as follows:-

8.1.1 the Company shall redeem:-

- (1) 525,000 of the Preference Shares then in issue on 31 July 2000;
- (2) 525,000 of the Preference Shares then in issue on 31 July 2001;
- (3) 525,000 of the Preference Shares then in issue on 31 March 2002;
- (4) all of the Preference Shares then in issue on 30 September 2003;

8.1.2 the Company shall (unless directed to the contrary by the holders of the Preference Shares) redeem all the Preference Shares then in issue immediately prior to either a Sale or a Quotation and the date of such Sale or Quotation shall, for the purpose of this Article 8, be the date fixed for redemption; and

8.1.3 at its option, the Company may, at any time at the expiration of one month's notice in writing, out of any profits or moneys of the Company which may be lawfully applied for that purpose, redeem (in multiples of not less than 50,000) such total number of Preference Shares as is specified in such notice.

8.2 Notwithstanding Article 8.1, the holders of the Preference Shares may upon the occurrence of any of the following events direct the Company, by serving on it a notice ("**Redemption Notice**", specifying the reason for redemption and the particular Preference Shares to be redeemed) to redeem all or such part of the Preference Shares so specified. The events are:-

8.2.1 the Company failing to pay the Preference Dividend within three months of the due date (irrespective of whether such dividend would be unlawful by reason of the Company having insufficient Available Profits);

8.2.2 the Company failing to redeem any Preference Shares within one month of the due date (irrespective of whether such redemption would be unlawful by reason of the Company having insufficient Available Profits) in accordance with the requirements of Article 8.1.1;

8.2.3 the Company giving notice of a general meeting of the Company proposing a resolution for the winding up of the Company or a resolution for a reduction in the capital of the Company and such proposal not having been withdrawn within seven days of receipt of written notice from the holder of Preference Shares requiring withdrawal; and/or

8.2.4 the Company and/or any of its subsidiaries being in default under the terms on which banking facilities or bank loans have been made available to the Group.

Such holders of the Preference Shares shall be entitled to withdraw their Redemption Notice if they serve the Company with notice to that effect before the redemption takes place.

Where redemption has arisen in accordance with this Article 8.2, the Company shall be obliged to redeem the Preference Shares specified in the Redemption Notice on the day following the receipt of such notice (which day shall be the date fixed for redemption).

8.3 If on the date fixed for redemption, by reason of the provisions of the Act the Company is unable to redeem in full the number of Preference Shares falling for redemption on that date, the Company shall redeem as many of the Preference Shares as can, consistently with such provisions, properly be redeemed and the balance as soon thereafter as such provisions shall permit.

8.4 If the Company is at any time redeeming less than all the Preference Shares for the

time being in issue, the number of shares to be redeemed shall be apportioned between those holders of the Preference Shares then in issue pro rata according to the number of Preference Shares held by them respectively at the date fixed for redemption.

8.5 Where Preference Shares are to be redeemed in accordance with Articles 8.1.2 or 8.1.3, the Company shall give to the holders of the Preference Shares falling to be redeemed prior notice in writing ("**a Redemption Notice**"). The Redemption Notice shall specify the particular Preference Shares to be redeemed and the date fixed for redemption (or, if not then known in the case of a redemption pursuant to Article 8.1.2, the expected date for redemption) and:-

8.5.1 in the case of a redemption pursuant to Article 8.1.2, shall not be given less than 28 nor more than 42 days prior to the expected date for redemption (and shall be conditional upon such Sale or Quotation occurring) and if the proposed Sale or Quotation does not occur within one month of the expected date for redemption there shall be no redemption and the said notice shall be revoked; and

8.5.2 in the case of a redemption pursuant to Article 8.1.3, shall not be given less than 28 nor more than 42 days prior to the date fixed for redemption.

8.6 On the date fixed for redemption, each of the holders of the Preference Shares falling to be redeemed shall be bound to deliver to the Company, at the Company's registered office (or such other place as the Board may reasonably determine), the certificate(s) for such of the Preference Shares concerned as are held by it (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) in order that the same may be cancelled. Upon such delivery, the Company shall pay to the holder (or, in the case of any joint holders, to the holder whose name stands first in the Company's Register of Members in respect of such shares) the amount due to it in respect of such redemption against delivery of a proper receipt for the redemption moneys.

8.7 If any certificate delivered to the Company pursuant to Article 8.6 includes any Preference Shares not falling to be redeemed on the date fixed for redemption, a fresh certificate in respect of those shares shall be issued to the holder(s) thereof as soon as practicable thereafter (and, in any event, within 28 days thereafter).

8.8 There shall be paid on the redemption of each Preference Share an amount ("**redemption monies**") equal to:-

8.8.1 100 per cent of the Issue Price thereof; and

8.8.2 all accrued and/or unpaid Preference Dividends in respect thereof, calculated down to (and including) the date of actual payment of the redemption monies;

and such aggregate amount shall, subject to the Company having Available Profits or other moneys which may be lawfully applied for such redemption, at that time become a debt due from and immediately payable by the Company to the holders of such Preference Shares. If and to the extent that the debt so constituted is not paid in full on the due date, the unpaid amount shall bear interest at the annual rate of 2 per cent above the base rate of National Westminster Bank plc (calculated on a daily basis over a 365 day year from and



including such due date to the actual date of payment and compounded at the end of each calendar month).

8.9 If the Company shall fail to pay all redemption monies in full on a date fixed for redemption, because it does not have Available Profits or other moneys which may be lawfully applied for such redemption then the amount so unpaid shall be increased by an amount equal to the interest that could have been earned on such sum at the annual rate of 3 per cent above the base rate of National Westminster Bank plc (calculated as set out in Article 4.4) and shall be paid as soon thereafter, and to the extent that, Available Profits or other moneys that may lawfully applied for such redemption have arisen. A reference in all these Articles to unpaid redemption monies shall be deemed to include all amounts representing interest on the unpaid amount.

8.10 As from and including the date fixed for redemption, the Preference Dividend in respect of any Preference Shares falling to be redeemed on such date shall cease to accrue except on any Preference Share in respect of which, on due presentation of the certificate relating thereto or an appropriate indemnity in respect of a lost certificate, payment of the redemption moneys is refused.

8.11 The Company may at its option at any time after the creation of any Deferred Shares redeem all of the Deferred Shares then in issue, at a price not exceeding 1p for all the Deferred Shares redeemed at any one time, upon giving the registered holders of such shares not less than 28 days' previous notice in writing of its intention so to do, fixing a time and place for the redemption, provided however that no such redemption may take place later than 31st December 2010.

#### **LIEN**

9. The lien conferred by Regulation 8 shall attach to all shares of any class, whether fully paid or not, and to all shares registered in the name of any person indebted or under liability to the Company, whether he be the sole registered holder thereof or one of two or more joint holders. Regulation 8 shall be modified accordingly.

#### **PROHIBITED TRANSFERS**

10. Notwithstanding any other provisions of these Articles, a holder of one or more Ordinary Shares shall not without the prior consent of the Preferred Ordinary Shareholders (i) serve a Transfer Notice under Article 11 or (ii) effect a transfer (except a transfer in accordance with Articles 12, 13 or 14) of such shares.

#### **PRE-EMPTION PROVISIONS**

11.1 Except in the case of a transfer pursuant to Articles 12, 13 or 14, a member who wishes to transfer any shares ("**Vendor**") shall give notice in writing of such wish to the Company ("**Transfer Notice**"). Each Transfer Notice shall:-

11.1.1 relate to one class of shares only;

11.1.2 specify the number and class of shares which the Vendor wishes to

transfer ("the **Sale Shares**");

11.1.3 specify the identity of the person to whom the Vendor wishes to transfer the Sale Shares ("the **Proposed Transferee**");

11.1.4 specify the price per share ("the **Sale Price**") at which the Vendor wishes to transfer the Sale Shares;

11.1.5 be deemed to constitute the Company the Vendor's agent for the sale of the Sale Shares at the Sale Price in the manner prescribed by these Articles; and

11.1.6 not be varied or cancelled without the Company's consent.

11.2.1 If the Sale Shares are Ordinary Shares held by an Australian Shareholder then they shall first be offered at the Sale Price to the other Australian Shareholder who is a holder of any Ordinary Shares and if such other Australian Shareholder shall apply within seven days of the date of such offer for any Sale Shares, the Company shall (conditionally on and subject to Article 11.3) allocate to such Australian Shareholder such number of Sale Shares applied for by such Australian Shareholder.

11.2.2 The provisions of Article 11.2.1 shall apply mutatis mutandis in respect of Sale Shares which are Ordinary Shares held by an UK Shareholder as if references therein to an Australian Shareholder who is a holder of any Ordinary Shares were references to a UK Shareholder who is a holder of any Ordinary Shares provided that if at any time there are more than two UK Shareholders holding Ordinary Shares then any Sale Shares offered to them shall be offered to each of them in the proportion (as nearly as practicable) as equals the proportion held by each such UK Shareholder of the Ordinary Shares held by all the UK Shareholders (other than the Vendor).

11.2.3 If the Board so determines, and subject in each case to prior Investor Consent and to the provisions of Articles 11.2.1 and 11.2.2, any Sale Shares which are Ordinary Shares shall be offered to any person or persons selected by the Board at the Sale Price. If such person or persons shall apply within seven days of the date of such offer for any Sale Shares, the Company shall (conditionally upon and subject to Article 11.3) allocate to such person or persons such number of Sale Shares applied for by such person or persons. If some but not all of the Sale Shares are allocated in accordance with Article 11.2.1 or 11.2.2, the remaining provisions of this Article 11 shall have effect as if reference to Sale Shares mean those not allocated in accordance with these Articles.

11.3.1 The Vendor may provide in the Transfer Notice that unless purchasers are found for all or not less than a specified number of the Sale Shares, he shall not be bound to transfer any of such shares ("**a Minimum Transfer Condition**") and any such provision shall be binding on the Company.

11.3.2 A member who holds shares of more than one class at the date of his Transfer Notice may include as a condition to such Transfer Notice that he shall not be bound to transfer the Sale Shares except to the extent that purchasers are found for the same proportion of his holdings of such other class or classes of shares as at such date as he

shall specify in such Transfer Notice ("**a Stapling Condition**") and any such provision shall be binding on the Company.

11.4 The Company shall, within seven days of receipt of a Transfer Notice, offer for purchase at the Sale Price to each Member holding shares of the same class as the Sale Shares (other than the Vendor) ("**the Relevant Members**") that proportion of the Sale Shares (as nearly as practicable) as equals the proportion of all the shares of the same class (other than the Sale Shares) ("**the Non-Sale Shares**") held by that Relevant Member and the Company will invite each of them to state in writing within 28 days of the date of dispatch of such offer whether he is willing to purchase any, and if so, how many, of his entitlement to the Sale Shares.

11.5 If the Relevant Members or any of them shall, within such 28 day period, apply for all or part of their entitlement to the Sale Shares, the Company shall allocate those Sale Shares which have been applied for to the Relevant Members but so that no Relevant Member shall be allocated more than his entitlement as determined under Article 11.4.

11.6 If following the allocation of the Sale Shares by the Company in accordance with Article 11.5 ("**the Allocation**") any Sale Shares are not allocated ("**the Remaining Sale Shares**") the Company shall within two days of the Allocation offer for purchase at the Sale Price to each Relevant Member who applied for his full entitlement to the Sale Shares under Article 11.4 ("**a Continuing Relevant Member**") that proportion of the Remaining Sale Shares (as nearly as practicable) as equals the proportion of the Non-Sale Shares held by the Continuing Relevant Members held by that Continuing Relevant Member and the Company will invite each Continuing Relevant Member to state in writing within seven days of the date of dispatch of such offer whether he is willing to purchase any, and if so, how many, of his entitlement to the Remaining Sale Shares.

11.7 If the Continuing Relevant Members or any of them shall, within such seven day period, apply for all or part of their entitlement to the Remaining Sale Shares, the Company shall allocate those Remaining Sale Shares which are then applied for to the Continuing Relevant Members but so that no Continuing Relevant Member shall be allocated more than his entitlement as determined under Article 11.6.

11.8 If, following the allocation of the Remaining Sale Shares by the Company in accordance with Article 11.7, any Sale Shares are not allocated, the Company shall repeat the procedure described in Articles 11.6 and 11.7 until all the Sale Shares have been allocated but so that in each case the only Relevant Members who may be offered Sale Shares by the Company in accordance with Article 11.6 will be those Relevant Members who applied for their full entitlement to the Sale Shares in the previous offer.

11.9 If, following an offer made by the Company under Articles 11.4, 11.6 or 11.8 any of the Sale Shares are not applied for and no Relevant Member has applied for his full entitlement during the time allowed for him to do so ("**the offer period**") the Company shall cease offering them to Relevant Members and may by notice in writing (given at any time within the period of seven days after the expiry of the relevant offer period) invite any person or persons selected by the Board (with Investor Consent) to apply for any of the Sale Shares not applied for by the shareholders at the Sale Price. If a person or persons so selected by the Board shall apply within seven days of such invitation for any Sale

Shares, the Company shall allocate to him or them such number of Sale Shares as they in their absolute discretion decide.

11.10 No person shall be obliged to take more than the maximum number of Sale Shares that he has indicated to the Company he is willing to purchase. An allocation of Sale Shares made by the Company pursuant to Articles 11.5, 11.6, 11.7, 11.8 or 11.9 shall constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them.

11.11 Notwithstanding the provisions of Articles 11.5 to 11.9 inclusive if the Transfer Notice contains a Minimum Transfer Condition or Stapling Condition the Company may not make an allocation of Sale Shares unless and until it has found purchasers for the minimum number specified in any such Minimum Transfer Condition or Stapling Condition.

11.12 The Company shall forthwith upon allocating any Sale Shares give notice in writing ("**a Sale Notice**") to the Vendor and to each person to whom Sale Shares have been so allocated, of the number of Sale Shares so allocated and the aggregate price payable therefor. Completion of the sale and purchase of those Sale Shares in accordance with the Sale Notice shall take place within seven days after the date of the Sale Notice whereupon the Vendor shall, upon payment of the price due in respect thereof, transfer those Sale Shares specified in the Sale Notice to the person or persons to whom they have been allocated and deliver the relative share certificates.

11.13 If in any case the Vendor, having become bound as aforesaid, makes default in transferring the Sale Shares, the Company may receive such purchase money and may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Vendor and thereafter, when such instrument has been duly stamped, the Company shall cause the name of the proposed transferee to be entered in the Register as the holder of such Sale Shares and where applicable shall hold the purchase money in trust (without interest) for the Vendor. The receipt of the Company for the purchase money shall be a good discharge to the proposed transferee (who shall not be bound to see to the application thereof) and, after his name has been entered in the Register in purported exercise of the aforesaid powers, the validity of the proceedings shall not be questioned by any person.

11.14 If all the Sale Shares are not sold under the pre-emption provisions contained in Articles 11.1 to 11.13 (inclusive), the Company shall (forthwith upon the exhaustion of such provisions) so notify the Vendor and the Vendor may at any time, within three calendar months after receiving such notification, transfer any Sale Shares not sold to the Proposed Transferee at any price not less than the Sale Price, provided that:-

11.14.1 the Board shall be entitled to refuse registration of the Proposed Transferee if he is, or is believed to be a nominee for a person reasonably considered by the Directors, to be a competitor or connected with a competitor of the business of the Group;

11.14.2 if the Vendor stipulated in the Transfer Notice a Minimum Transfer Condition which has not been satisfied, the Vendor shall not be entitled, save with the written consent of all the other Members, to sell any number of Sale Shares

which is less than the number specified in such Minimum Transfer Condition; and

11.14.3 any such sale shall be a bona fide sale and the Board may require to be satisfied (in such manner as they may reasonably think fit) that the Sale Shares are being sold in pursuance of a bona fide sale for not less than the Sale Price without any deduction, rebate or allowance whatsoever to the Proposed Transferee and if not so satisfied may refuse to register the instrument of transfer.

#### **PERMITTED TRANSFERS**

12. A member or members may at any time transfer any share:-

12.1 if an Ordinary Share to any person with prior Investor Consent and the prior consent of holders of over 50 per cent of the Ordinary Shares excluding the proposing transferee;

12.2 if an Investor to any of its Investor Associates (other than an Investor Associate who directly or indirectly carries on any business which competes with the business of the Group as carried on from time to time provided that this exception shall not be deemed to prohibit or restrict an Investor Associate from being interested in a competing business in the ordinary course of its business as an investor where such interest does not involve any participation in the day to day management of such business);

12.3 if an Investor to any unitholder, shareholder, partner, participant, manager or adviser (or any employee of such manager or adviser) in any investment fund or co-investment plan in respect of which the transferor is a nominee or custodian;

12.4 if an Investor to the beneficial owner or owners in respect of which the transferor is a nominee or custodian or any other nominee or custodian for such beneficial owners;

12.5 if an Investor to any other investment fund managed or advised by the same manager or adviser as the investment fund in respect of which the transferor is a nominee or custodian;

12.6 if an Investor to a nominee, custodian or to a member of the same group of any of the persons referred to in Articles 12.3 to 12.6 inclusive;

12.7.1 if PB Duncan Pty Limited to W.G. Davey Pty Limited and vice versa; and

12.7.2 if F U Petrie Esq to P D Brennan Esq and vice versa;

12.8 if an Original Participant who is an individual to a Related Person over the age of eighteen years;

12.9 if such member holds such share or shares as a result of a transfer made after the date of the adoption of these Articles by a person in relation to whom such member is a Permitted Transferee to the person who originally transferred such shares or any other Permitted Transferee, of such original transferor;

12.10 if the trustees of a trust the beneficiaries of which are the Original Participant or their Related Persons:-

12.10.1 upon any change of trustees, to the new or remaining trustee or trustees for the time being of such trust; and

12.10.2 to the Original Participant and/or any of the Related Persons of the Original Participant on their becoming entitled to the same under the terms of the trust;

12.11 to the trustees of a trust established to encourage or facilitate the holding of shares in the Company by bona fide full-time employees of the Company or any other Group Company or any section of such employees; or

12.12 if a trustee of any trust referred to in Article 12.11;

12.12.1 upon any change of trustees, to the new or remaining trustee or trustees for the time being of such trust; and

12.12.2 to any bona fide full-time employees of the Company or any other Group Company on their becoming entitled to the same under the terms of the trust.

12.13 For the purpose of ensuring that a transfer of shares is duly authorised hereunder, the Board may, and shall if so requested by any holder of Preferred Ordinary Shares from time to time, require:-

12.13.1 any member or the legal personal representatives of any deceased member; or

12.13.2 any person named as transferee in any transfer lodged for registration; or

12.13.3 such other person as the Board or any such holder may reasonably believe to have information relevant to such purpose;

to furnish to the Company such information and evidence as the Board may think fit regarding any matter which they deem relevant to such purpose including the names, addresses, ages and interests of all persons respectively having interests in the shares from time to time registered in the member's name and the Board may refuse to register the relevant transfer until it has received such information and evidence.

### LEAVERS

13.1 Whenever any person becomes a Leaver, the provisions of this Article 13 shall apply notwithstanding the other provisions of these Articles (except in the case of a transfer under Article 12.1). If this Article 13 applies, the Company will if directed by the holders of the Preferred Ordinary Shares and may if the consent of the holders of the Preferred Ordinary Shares is obtained, within the period commencing on the relevant Leaving Date and expiring at midnight on the date falling six months after such date:-

13.1.1 serve one or more notices on the Leaver requiring him to sell all or some of his Leavers' Shares to the Company ("a Compulsory Purchase Notice"); or

13.1.2 serve one or more notices on the Leaver notifying him that he may retain all or some of his Leaver's Shares; or

13.1.3 serve one or more notices on the Leaver notifying him that the provisions of Article 13.3 shall apply in respect of all or some of his Leaver's Shares notwithstanding the fact that such notice is served prior to midnight on the date falling six months after the Leaving Date;

and the references to the "Leaver's Shares" in Article 13.2 shall be construed as references to such number of the Leaver's Shares in respect of which the relevant notice has been served.

13.2 Whenever a Compulsory Purchase Notice is served in accordance with Article 13.1.1:-

13.2.1 it will be served on the persons who hold or are entitled to the Leaver's Shares and notify such persons of the expected date for the purchase of the Leaver's Shares (provided that such notice shall be served not less than two clear days prior to the date upon which actual completion of the purchase is expected to take place);

13.2.2 the Company shall effect the purchase of the Leaver's Shares in accordance with such lawful method as the holders of Preferred Ordinary Shares shall direct. Relevant shareholder approval for the purchase of the Leaver's Shares must be obtained within 90 days of the date on which the Company serves the Compulsory Purchase Notice and completion of the purchase of the Leaver's Shares by the Company must take place within 30 days of the date upon which the Company becomes lawfully able to purchase the Leaver's Shares in accordance with the Act, failing which the Compulsory Purchase Notice shall be deemed to have been withdrawn;

13.2.3 the price to be paid by the Company for each of the Leaver's Shares will if the Leaving Date occurs on or before the second anniversary of the date of Adoption of these Articles and the Leaver is a Good Leaver, be a sum equal to the market value of each Leaver's Share to be determined as provided in clause 13.2.4 ("Market Value"). The price to be paid for each Leaver's Share, where the Leaving Date occurs on or before the second anniversary of the date of Adoption of these Articles and the Leaver is not a Good Leaver shall be the lower of the Issue Price of the Leavers' Shares and their Market Value. The price to be paid for each of the Leaver's Shares, where the Leaving Date occurs after the second anniversary of the date of Adoption of these Articles shall be their Market Value.

13.2.4 if for the purposes of Article 13.2.3 or 13.3.3 the market value of the Leaver's Shares needs to be determined it shall be determined by the Auditors first determining, in their opinion, the market value of each class of shares of which the Leaver's Shares comprise a part, on the basis of a sale as between a willing vendor and a willing purchaser of the entire issued share capital of the Company in the open market taking into account all such factors as the Auditors may deem relevant but without taking account of whether such shares constitute a minority or a

majority interest. The Auditors shall then allocate to the particular class of Leaver's Shares that proportion of the market value of such entire class of shares as equals the proportion that the particular class of Leaver's Shares bears to such entire class of shares. The Auditors shall certify a market value for each Leaver's Share as soon as possible after being instructed by the Company and in so certifying the Auditors shall be deemed to be acting as experts and not arbitrators and the Arbitration Acts 1950-79 shall not apply. The certificate of the Auditors shall, in the absence of manifest error, be final and binding. The Company shall procure that any certificate required hereunder is obtained with due expedition and the cost of obtaining such certificate shall, subject to complying with the Act, be borne by the Company or if not so permitted by the Act, by the Leaver;

13.2.5 completion of the sale and purchase of the Leaver's Shares shall take place at the registered office of the Company (or at such other place as the Board may reasonably determine) and, at completion, the Leaver shall deliver (or procure the delivery of) a duly signed stock transfer form or forms in respect of his Leaver's Shares together with the relative share certificates or, if such certificate is lost, together with a form of indemnity for lost certificate in a form reasonably acceptable to the Board. Upon receipt of the duly signed stock transfer form or forms and the relevant share certificates the Company shall pay the aggregate purchase price for the Leaver's Shares to the relevant holder thereof by way of cheque; and

13.2.6 if any Leaver fails to attend completion of the sale of his Leaver's Shares or attends completion but does not present duly executed stock transfer forms in respect of his Leaver's Shares and relative share certificates and/or indemnities for any lost certificates, the Company may receive the purchase money due to the Leaver and may nominate some person to execute an instrument of transfer of the Leaver's Shares in the name of and on behalf of the Leaver. When such instrument has been duly presented for stamping, the Company shall cause the name of the Leaver to be deleted from the Register of Members and the Leaver's Shares to be cancelled and, where applicable, shall hold the purchase money in trust without interest for the Leaver. After the name(s) of the Leaver has been deleted from the Register of Members in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.

13.3 If at midnight on the date falling six months after the relevant Leaving Date, the Company has not served any notice(s) pursuant to Articles 13.1.1 or 13.1.2 in respect of all the Leaver's Shares or if, at any time prior to such time and date, the Company serves (a) notice(s) pursuant to Article 13.1.3, any Leaver shall be deemed to have served a Transfer Notice in respect of all of his Leaver's Shares in respect of which a notice has not previously been served (or, in the case of a notice served pursuant to Article 13.1.3, such number of Leaver's Shares as may be specified in such notice) and the provisions of Articles 11.2 to 11.13 (inclusive) shall apply mutatis mutandis to any such Transfer Notice, provided that for these purposes:-

13.3.1 the Sale Shares shall comprise the above-mentioned shares;

13.3.2 no Proposed Transferee shall be specified in the Transfer Notice;



13.3.3 the Sale Price of the Sale Shares shall be the appropriate price calculated in accordance with Article 13.2.3; and

13.3.4 there shall be deemed to be no Minimum Transfer Condition or Stapling Condition.

13.4 For the purpose of ensuring that no circumstances have arisen where the provisions of this Article 13 would apply, the Board may, require:-

13.4.1 any member or the legal personal representative of any deceased member; or

13.4.2 any person named as transferee in any transfer lodged for registration; or

13.4.3 such other person as the Board or any such holder may reasonably believe to have information relevant to such purpose;

to furnish to the Company such information and evidence as the Board may in its reasonable opinion think fit regarding any matter which they deem relevant to such purpose including the names, addresses, ages and interests of all persons respectively having interests in the shares from time to time registered in the member's name and if such information and evidence is not so furnished, or if as a result of such information and evidence the Board is reasonably satisfied that an event giving rise to a Leaver has occurred, the provisions of this Article 13 shall apply.

13.5 Each member of the Company hereby irrevocably appoints the Company as his attorney (with the power to appoint any member of the Board as a substitute and to delegate to that substitute all or any powers hereby conferred, other than this power of substitution, as if he had been originally appointed by this Power of Attorney) to give effect to the provisions of Article 11 and this Article 13.

13.6 A **Good Leaver** shall for the purpose of these Articles mean a Leaver who ceases to be employed by any Group Company (or the employee by reference to whom the Leaver is a Leaver ceasing to be so employed) otherwise than by reason of dismissal for Fraud or Gross Misconduct.

13.7 For the purposes of Article 13.6:-

13.7.1 "**Fraud**" shall mean being convicted of the English law criminal offences of fraud or theft (or any comparable criminal offences under any other jurisdiction);

13.7.2 "**Gross Misconduct**" shall mean (i) being guilty of misconduct which materially affects (or which would materially affect, but for the dismissal) the interests of the Company and which brings (or which would bring, but for the dismissal) the Company into serious disrepute or (ii) being convicted of any criminal offence punishable by six months or more imprisonment (excluding a road traffic offence in the United Kingdom for which a sentence of less than six months is imposed).

### **DRAG ALONG**

14.1 For the purposes of this Article 14 the expression "Qualifying Offer" shall mean a document in writing delivered to any holder of equity share capital in the Company containing a bona fide arms length offer to acquire all the equity share capital of the Company then in issue for cash. Any disagreement as to whether an offer is a Qualifying Offer shall be referred to an umpire (who shall act as an expert and not as an arbitrator) nominated by the parties concerned (or, in the event of disagreement as to the nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales upon the application of any of such parties) whose decision shall in the absence of manifest error be final and binding.

14.2 If at any time prior to the seventh anniversary of the date of adoption of these Articles a Qualifying Offer is made by or on behalf of any person ("the offeror") to any holder of equity shares in the capital of the Company, such holder shall forthwith notify the other shareholders of the fact of the Qualifying Offer, the identity of the offeror and the offer price. If the holders of not less than 75 per cent. of all the Ordinary Shares and the Preferred Ordinary Shares (taken together) then in issue ("the accepting shareholders") state that they wish to accept the Qualifying Offer, then the accepting shareholders shall notify the remaining holders of equity shares in the capital of the Company of the fact of the Qualifying Offer, the identity of the offeror and the offer price and the other shareholders shall be bound to accept the Qualifying Offer.

14.3 If at any time after the seventh anniversary of the date of adoption of these Articles a Qualifying Offer is made as set out in Article 14.2, then, if the holders of more than 50% of the Preferred Ordinary Shares and the Ordinary Shares (taken together) then in issue state that they wish to accept the Qualifying Offer, then they shall notify the remaining holders of equity shares in the capital of the Company of the fact of the Qualifying Offer, the identity of the offer or and the offer price and the other shareholders shall be bound to accept the Qualifying Offer.

14.4 If any shareholder shall not, within seven days of being required to do so following a Qualifying Offer, execute and deliver transfers in respect of the shares held by him and deliver the certificate(s) in respect of the same (or a suitable indemnity in lieu thereof), then any accepting shareholder shall be entitled to, and shall be entitled to authorise and instruct such person as he thinks fit to, execute the necessary transfer(s) and indemnities on the other shareholder's behalf and, against receipt by the Company (on trust for such shareholder) of the purchase monies payable for the relevant shares, deliver such transfer(s) and certificates or indemnities to the offeror or his nominee and register such offer or his nominee as the holder thereof and, after such offeror or his nominee has been registered as the holder, the validity of such proceedings shall not be questioned by any person. As security for the above obligations, each Member irrevocably appoints each holder of shares in the capital of the Company from time to time as its attorney to execute and do all such deeds, documents and things in the name of and on behalf of such Member as may reasonably be required to give full effect to the provisions of this Article 14.

14.5 To avoid doubt, in Article 14.4 the term "accepting shareholder" shall:-

14.5.1 have the meaning attributed to it in Article 14.2, if a Qualifying Offer is made in accordance with Article 14.2; and

14.5.2 mean 50% of the Preferred Ordinary Shares and the Ordinary Shares (taken together) then in issue, if a Qualifying Offer is made in accordance with Article 14.3.

### **ANNUAL GENERAL MEETINGS**

15.1 The Board shall procure that the Annual General Meeting in respect of each financial year of the Company shall be convened to take place not later than 45 days after the date of the Auditors' report relating to the Accounts for the relevant financial year.

15.2 The Board shall cause to be laid before each such Annual General Meeting the Accounts for the relevant financial year, together with the respective reports thereon of the directors and the Auditors.

### **PROCEEDINGS AT GENERAL MEETINGS**

16.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and, subject to Article 16.2, for its duration. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

16.2 If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 10 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the members present may decide and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the member or members present shall constitute a quorum.

16.3 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded at any general meeting by the Chairman, or by any member present in person or by proxy and entitled to vote or by a duly authorised representative of a corporation which is a member entitled to vote.

16.4 The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Board must be delivered to the registered office of the Company not less than 48 hours before the time appointed for the holding of the meeting or to the place of the meeting at any time before the time appointed for the holding of the meeting and Regulation 62 shall be modified accordingly.

16.5 When a poll has been demanded it shall be taken immediately following the demand.

16.6 The Chairman of the meeting shall not, in the case of an equality of votes, whether on a show of hands or on a poll, be entitled to exercise any second or casting vote.

16.7 With respect to any such resolution in writing as is referred to in Regulation 53 of Table A, in the case of a corporation which holds a share, the signature of any director or the secretary thereof shall be sufficient for the purposes of Regulation 53.

### **NOMINATED DIRECTOR**

17.1 The holders for the time being of 75 per cent in nominal value of the issued Preferred Ordinary Shares shall have the right at any time and from time to time to appoint any person to be a director of the Company and any person to be a director of each subsidiary and each subsidiary undertaking of the Company (each such person "**Nominated Director**") and, in relation to such right, the following provisions shall have effect:-

17.1.1 any such appointment shall be effected by notice in writing to the relevant Group Company signed by such holders who may in like manner at any time and from time to time remove from office any director so appointed and appoint any person in place of any director so removed or otherwise vacating office;

17.1.2 each such appointment and removal shall take effect forthwith upon such notice being received by the Company and the provisions of Regulation 76 shall be read subject to this Article 17; and

17.1.3 only the Preferred Ordinary Shares shall confer upon the holders thereof the right to vote upon any resolution pursuant to section 303 of the Act for the removal of any Nominated Director for the time being holding office pursuant to this Article.

17.2 Notice of meetings of directors shall be served on each Nominated Director at the address notified by him to the Company for this purpose whether he shall be present in or absent from the United Kingdom and if he has appointed an alternate director on such alternate director at the address notified by such alternate director to the Company.

### **NUMBER OF DIRECTORS**

18. The number of directors (including the Nominated Director but excluding alternate directors) shall not be less than two in number.

### **ALTERNATE DIRECTORS**

19. A director (other than an alternate director) may appoint any other director or, in the case of the Nominated Director any other person whomsoever or, in the case of any other director, any other person approved by resolution of the Board and willing to act, to be an alternate director and may remove from office an alternate director so appointed.

20. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.

21. Any director of the Company who is appointed an alternate director shall be entitled to vote at a meeting of the Board on behalf of the director so appointing him as distinct from the vote to which he is entitled in his own capacity as a director of the Company and

shall also be considered as two directors for the purpose of making a quorum of directors unless he is the only individual present.

### **PROCEEDINGS OF DIRECTORS**

22. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Any two directors shall constitute a quorum and a quorum of directors must be present throughout all meetings of the Board. The Chairman of the meeting shall not have a second or casting vote, in the case of an equality of votes, and the fifth sentence of Regulation 88 shall not apply to the Company.

23. Any director or alternate director may validly participate in a meeting of the Board or a committee of the Board through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Subject to the Act, all business transacted in such manner by the Board or a committee of the Board shall for the purpose of these Articles be deemed to be validly and effectively transacted at a meeting of the Board or a committee of the Board notwithstanding that fewer than two directors or alternate directors are physically present at the same place. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chairman of the meeting then is.

### **RETIREMENT BY ROTATION**

24. The directors shall not be liable to retire by rotation and the words "by rotation or otherwise" and "and deemed to have been reappointed" in Regulation 67, "other than a director retiring by rotation" in Regulation 76, "(other than a director retiring by rotation at the meeting)" in Regulation 77, "and may also determine the rotation in which any additional directors are to retire" in Regulation 78, the last two sentences of Regulation 79 and the last sentence of Regulation 84 shall not apply to the Company.

### **BORROWING POWERS**

25. The directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and assets (present or future) and uncalled capital and, subject to that Act, to issue debentures and other securities, whether outright or as collateral security, for any debt, liability or obligation of the Company or of any third party provided that, without prior Investor Consent (not to be unreasonably withheld or delayed) Borrowings shall not exceed £1 ½ million.

**SCHEDULE**

1. In this Schedule, the following words and phrases have the meanings attributed to them as follows:-

**Capitalisation Value (CV)**

(i) in the event of a Quotation, the aggregate value of all the shares for which a Quotation is obtained (excluding any new shares being of the same class as the Offer Shares to be issued by the Company as part of the arrangements relating to the Quotation (other than any new shares to be paid up by way of capitalisation of reserves)) ("**Offer Shares**") determined by reference to the price per share at which the Offer Shares are to be offered for sale, placed or otherwise marketed pursuant to the arrangements relating to the Quotation;

(ii) in the event of a Sale, the purchase price per share payable on completion of such Sale multiplied by the number of shares in issue (other than the Deferred Shares) provided that if any part of the purchase price is payable otherwise than in cash or is cash payable on deferred terms the amount of the purchase price shall be the aggregate of the amount of the purchase price payable in cash (payable on completion of the Sale) and the Cash Equivalent per share;

**Cash Equivalent**

the sum certified by the Auditors (acting as experts and not arbitrators and whose certificate shall be binding on all members save in the case of manifest error) as being in their opinion the then current value of the right to receive the consideration in question (where the consideration is payable on deferred terms) or (in the case of consideration payable otherwise than in cash) their opinion of the monetary value of such consideration at that time;

**Cash Flow (or "CF<sub>j</sub>")**

in respect of a month (month j), the aggregate amount of Cash Inflow for that month;

**Cash Inflow**

in respect of a period and a class of shares in the capital of the Company, the aggregate of all amounts received by the holders of shares of such class during the relevant period derived from their holding of such shares and, without prejudice to the generality of the foregoing, shall be deemed to include:-

(i) the amount of any dividends and distributions (and any associated tax credit) on such shares during that

period;

(ii) any sums received on redemption or purchase by the Company of any such shares;

(iii) any sums received on a return of capital in respect of such shares;

(iv) interest received on Loan Notes; and

(v) sums received on repayment or redemption of Loan Notes;

provided always that no account shall be taken of any fees, commissions or other like sums received in respect of such shares and, save as dealt with in paragraph (i). above, any such sums shall be calculated prior to any effect of any tax in relation to any receipt from the Company by a holder of any such shares, provided further that, for the avoidance of doubt, any dividends or distributions (and any associated tax credit) paid to the holders of shares of such class on the Conversion Date or after the Conversion Date (pursuant to the terms agreed in respect of the Conversion Event itself and in respect of the period prior to the Conversion Date) shall be included as receipts received by the holders of shares of such class for the period ending on the Conversion Date;

**Investment**

in respect of Preferred Ordinary Shares and Preference Shares, the amount equal to the aggregate Issue Price of shares in those classes and in respect of Loan Notes, the amount paid on the transfer of Loan Notes pursuant to Put or Call Options;

**Management Equity Percentage**

the percentage of the "A" Ordinary Shares to be held immediately after a conversion effected pursuant to a Conversion Event by the persons who held the "A" and "B" Ordinary Shares immediately before such conversion;

**month**

a period starting on one day in a calendar month and ending on the day before the numerically corresponding day ("D - 1") in the next calendar month; provided that, if there is no numerically corresponding day to D - 1 in the calendar month in which that period ends, that period shall end on the last day of that calendar month;

**Put or Call Options**

agreements of even date regulating the terms of Put or Call Options in relation to the Loan Notes;

**Return (R)**

in relation to the Preferred Ordinary Shares

$$R = \sum (I \times 1.02210^n)$$

where "n" is as defined in the definition of Target Amount

**Subscription Date**

the date(s) on which any share is allotted and issued, fully paid or credited as fully paid and the date(s) on which Loan Notes are transferred pursuant to Put or Call Options;

**Target Amount (or "TA")**

in respect of the Preferred Ordinary Shares in the capital of the Company, the amount required to be received by the holders of such shares which, when taken together with the Compounded Cash Flow, would result in the holders of such shares obtaining the Return; such amount shall be calculated as follows:-

$$TA = R - \sum_{j=0}^n (CF_j \times DR^{(n-j)})$$

where:-

**R** = Return;

**n** = for each investment, the number of successive months falling between the month in which the relevant Subscription Date falls and the month in which the Conversion Date falls; attributing to the month in which the Subscription Date falls, the number 0, the next following month, the number 1, and so on so that the month in which the Conversion Date falls has the number "n";

**j** = the number attributable to a particular month, number 0 being attributed to the month in which the relevant Subscription Date falls, number 1 being attributed to the next month and so on until  $j = n$ ;

$\sum$  = the total amount resulting from the addition of each of the products of the formula  $(CF_j \times DR^{(n-j)})$ , calculated in respect of each of the months (or



relevant periods) that have elapsed prior to the Conversion Date;

DR = the monthly discount rate, 1.02210, which is applied to items of Cash Flow to produce an annual rate of 30 per cent. compounding monthly; and

$$\text{Compounded Cash Flow} = \sum_{j=0}^n (CF_j \times DR^{(n-j)})$$

2. The Preferred Ordinary Shares and "B" Ordinary Shares shall be converted into such number of "A" Ordinary and Deferred Shares respectively as will result in the holders of the "A" Ordinary Shares and the "B" Ordinary Shares in issue immediately prior to the Conversion Event, holding the Management Equity Percentage of the "A" Ordinary Shares immediately after the conversion. The number of "A" Ordinary and Deferred Shares into which the Preferred Ordinary and "B" Ordinary Shares shall convert to achieve this objective shall be calculated by the Auditors.

3. In order to establish the Management Equity Percentage, the Company and its members shall procure that the following calculations are made by the Auditors.

2.1 First, the Auditors shall calculate and certify the Capitalisation Value.

2.2 Second, the Auditors shall calculate and certify the Return.

2.3 Third, the Auditors shall calculate and certify the Target Amount.

4. If the Target Amount is equal to or less than 49% of the Capitalisation Value, then the Management Equity Percentage shall be 51% and 5,883 Preferred Ordinary Shares shall be converted into 5,883 Deferred Shares and the remaining 144,117 of the Preferred Ordinary Shares shall be converted into 144,117 "A" Ordinary Shares and the 50,000 "B" Ordinary Shares shall be converted into 50,000 "A" Ordinary Shares.

5. If the Target Amount is equal to or greater than 60% of the Capitalisation Value, then the Management Equity Percentage shall be 40% and the 50,000 "B" Ordinary Shares shall be converted into 50,000 Deferred Shares and all of the 150,000 Preferred Ordinary Shares shall be converted into 150,000 "A" Ordinary Shares.

6. If the Target Amount is greater than 49% but less than 60% of the Capitalisation Value, then the Auditors shall perform the following calculation: Capitalisation Value x P% (where P is each percentage figure (rounded up to one decimal point) between 49% and 60%).

7. If pursuant to any calculation under paragraph 6, a value of P% is found so that P% x Capitalisation Value equals the Target Amount then the Management Equity Percentage shall be calculated as 100 - P% and all of the 150,000 Preferred Ordinary Shares shall be converted into 150,000 "A" Ordinary Shares and such number of "B" Ordinary Shares shall be converted into Deferred Shares and the balance converted into "A" Ordinary Shares

as shall result in the holders of "A" and "B" Ordinary Shares immediately prior to the conversion holding the Management Equity Percentage of "A" Ordinary Shares immediately after the conversion.

8. The number of Preferred Ordinary and "B" Ordinary Shares to be converted into "A" Ordinary or Deferred Shares as appropriate in accordance with this Article shall be as nearly as possible *pro rata* to each such holder's percentage holding of such class of shares.

9. Conversion shall be effected by means of consolidation and subdivision of the Preferred Ordinary and "B" Ordinary Shares respectively as follows:-

9.1 All the Preferred Ordinary Shares shall be consolidated into one Preferred Ordinary Share of £150,000 which shall immediately be sub-divided into such number of "A" Ordinary Shares and Deferred Shares respectively as shall result in the persons who were the holders of the "A" and "B" Ordinary Shares immediately prior to the Conversion Event, holding immediately after the Conversion Event the Management Equity Percentage of the "A" Ordinary Shares when the shares resulting from the sub-division are added to those resulting from the sub-division under paragraph 9.2 below;

9.2 All the "B" Ordinary Shares shall be consolidated into one "B" Ordinary Share of £50,000 which shall immediately be sub-divided into such number of "A" Ordinary Shares and Deferred Shares respectively as shall result in the persons who were the holders of the "A" and "B" Ordinary Shares immediately prior to the Conversion Event, holding immediately after the Conversion Event the Management Equity Percentage of the "A" Ordinary Shares when the shares resulting from the sub-division are added to those resulting from the sub-division under paragraph 9.1 above.

10. If any fraction of an "A" Ordinary Share or Deferred Share would otherwise arise as a result of the conversion of any share in accordance with the above provisions, the total number of "A" Ordinary Shares (as the case may be) attributable to the holders of the relevant shares pursuant to such conversion shall be rounded up to the nearest whole number of Ordinary Shares and the balance shall be converted into Deferred Shares.

11. Forthwith upon the Conversion Event, the holders of the "A" Ordinary and Deferred Shares resulting from the conversion shall send to the Company the certificates in respect of their respective holdings of Preferred Ordinary Shares and "B" Ordinary Shares and thereupon, but subject to receipt of such certificates, the Company shall issue to such holders respectively certificates for the "A" Ordinary Shares and Deferred Shares resulting from the conversion.

12. The "A" Ordinary Shares resulting from the conversion shall for purposes of dividend, voting and return of capital be identical in all respects and form one class with the other "A" Ordinary Shares in the capital of the Company then in issue.

13. The creation or issue of Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time thereafter to appoint any person to execute on

behalf of the holder of such shares a transfer thereof and/or an agreement to transfer the same to such person or persons as the Company may determine as custodian thereof and/or purchase the same in accordance with the Act in any such case for not more than 1p for all the Deferred Shares registered in the name of any such holder without obtaining the sanction of such holder or holders and pending such transfer and/or purchase to retain the certificates (if any) in respect thereof.