

13 - 05 - 97

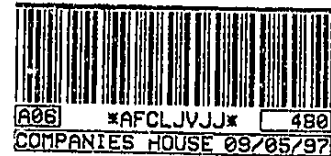
Company No 3289569

THE COMPANIES ACT 1985

COMPANY LIMITED BY SHARES

SPECIAL RESOLUTIONS

of



PEAPOD LIMITED

Passed the 17th day of March 1997

At an EXTRAORDINARY GENERAL MEETING of the above-named Company duly convened and held at Cloth Hall Court, Infirmary Street, Leeds LS1 2JB on Monday the 17th day of March 1997 the following Resolutions Nos 1, 2, 3 and 4 were duly passed as Special Resolutions of the Company :-

SPECIAL RESOLUTIONS

1. THAT notwithstanding that such transaction may constitute a substantial property transaction pursuant to the provisions of section 320 of the Companies Act 1985 the provisions (as the same may be amended, varied, supplemented or substituted) of a Sale and Purchase Agreement (the "Sale and Purchase Agreement") transferring the entire issued share capital of Produmax Limited to the Company is hereby approved and (notwithstanding any provisions of the Memorandum and Articles of Association of the Company or any personal interest of any of the directors) the directors of the Company are hereby empowered, authorised and directed to complete and enter into the Sale and Purchase Agreement.
2. THAT the authorised share capital of the Company be increased from £100 divided into 100 Ordinary Shares of £1 each to £675,000 divided into 25,000 Ordinary Shares and

650,000 Redeemable Preference Shares all of £1 each by the creation of 650,000 Redeemable Preference Shares of £1 each and 24,900 Ordinary Shares of £1 each, such new Shares having the rights and being subject to the obligations as set out in the new Articles of Association to be considered for adoption at Resolution 3.

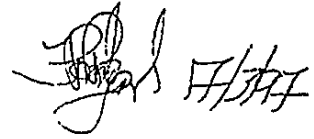
3. **THAT**

- (i) For the purposes of Section 80 of the Companies Act 1985 the Directors be and are hereby generally and unconditionally empowered to allot up to 650,000 Redeemable Preference Shares of £1 each in the capital of the Company and up to 24,998 Ordinary Shares of £1 each in the capital of the Company;
- (ii) to the extent that the Directors are empowered to allot shares in the Company by paragraph (i) of this Resolution they are hereby empowered pursuant to Section 95 of the Companies Act 1985 to allot or agree to allot shares comprised in the authorised share capital of the Company and the provisions of Sections 89 and 90 of the Companies Act 1985 shall not apply to any such allotment or agreement to allot;
- (iii) the powers conferred on the Directors by paragraphs (i) and (ii) of this Resolution shall expire five years after the date of the passing of this Resolution.

4. That the regulations contained in the printed document put before the Meeting and for the purpose of identification signed by the Chairman thereof be approved and adopted as the Articles of Association of the Company in substitution for the existing Articles of Association of the Company.


.....
Chairman

13 - 05 - 97



The Companies Act 1985

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

PEAPOD LIMITED

Company Number 3289569

Adopted by

Special Resolution passed on 17 March 1997

1. Preliminary

The regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 in force at the time of adoption of these Articles (a copy of such Table being attached to these Articles and hereinafter called "Table A") shall apply to the Company save in so far as they are excluded or varied by these Articles and such regulations (save as so excluded or varied) and these Articles shall be the regulations of the Company.

2. Interpretation

In these Articles and in Table A the following expressions have the following meanings unless inconsistent with the context:-

13 - 05 - 97

"the Act"

The Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force

"these Articles"

These Articles of Association, whether as originally adopted or as from time to time altered by special resolution

"clear days"

In relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect

"the Defined Sum"

A sum equal to the average annual profits before tax and financing (appropriately adjusted as provided below) for Produmax as shown in the audited statutory accounts for Produmax for the four financial years ending on 30 November 1996, 30 November 1997, 30 November 1998 and 30 November 1999, such audited statutory accounts to be prepared:-

- a) in accordance with the requirements of the Act;
- b) in accordance with the historical cost convention, with all applicable Accounting Standards and (to the extent that no Accounting Standard is applicable) with accounting principles and practices generally accepted in the United Kingdom;

13 - 05 - 97

- c) on bases and principles which are consistent with those used in the preparation of the audited statutory accounts of Produmax for the financial years ending 30 November 1993, 30 November 1994 and 30 November 1995;
- d) so that they show a true and fair view of the state of affairs of Produmax;
- e) so that they (without prejudice to the generality of the provisions of points a-d above) fully provide for all liabilities (other than contingent or potential liabilities which are not expected to crystallise);
- f) so that they (without prejudice to the generality of the provisions of points a-d above) correctly and accurately set forth the capital and reserves and all the assets of Produmax and the profits (or losses) of Produmax;
- g) so that they (without prejudice to the generality of the provisions of points a-d above) fully provide for all bad debts and adequately provide for all doubtful debts;
- h) so that they (without prejudice to the generality of the provisions of points a-d above) attribute a value to stock which does not exceed the lower of cost and net realisable value as at the end of the relevant financial year after wholly writing off all

13 - 05 - 97

redundant or obsolete stock and appropriately writing down all slow moving and damaged stock;

- i) so that they (without prejudice to the generality of the provisions of points a-d above) are not affected by any extraordinary or exceptional event, circumstance or item;
- j) so that they (without prejudice to the generality of points a - d above) show management charges paid to the Company for an amount equal to the total expenditure made by the Company but relating to the normal operating of Produmax in the relevant financial year;
- k) so that for the avoidance of doubt and without prejudice to the generality of the previous provisions of points a - d above they are not adjusted in any way to incorporate or reflect the Completion Accounts (as defined in a sale and purchase agreement made between Ronald Nelson Walker, Tracey Anne Pickard and Janine Ruth Herpe (1) and the Company (2) and dated 17 March 1997)

"the directors"

The directors for the time being of the Company or (as the context shall require) any of them acting as the board of directors of the Company

"executed"

Includes any mode of execution

"the finance documents"

Each and every one of the following documents:-

- a) a Term Loan Facility Agreement made between Barclays Bank PLC (1) and the Company (2) and dated 17 March 1997;
- b) a Working Capital Facility Agreement made between Barclays Bank PLC (1) the Company (2) and Produmax (3) and dated 17 March 1997;
- c) a Term Loan Facility Agreement guaranteed by the Secretary of State pursuant to the Industrial Development Act 1982 made between Barclays Bank PLC (1) and the Company (2) and dated 17 March 1997;
- d) a Support Deed made between Barclays Bank PLC (1) Produmax (2) and the Company (3) and dated 17 March 1997;
- e) a Cross-Guarantee and Debenture made between Barclays Bank PLC and respectively the Company and Produmax dated 17 March 1997;
- f) a Legal Charge made between Barclays Bank PLC (1) and Produmax (2) and dated 17 March 1997;
- g) a Legal Charge made between Barclays Bank PLC (1) and the Company (2) dated 17 March 1997;

- h) a Chattels Mortgage made between Barclays Bank PLC (1) and Produmax (2) and dated 17 March 1997;
- i) a Share Mortgage made between Barclays Bank PLC (1) and the Company (2) and dated 17 March 1997
- j) a Share Mortgage made between Barclays Bank PLC (1) and Produmax (2) and dated 17 March 1997;
- i) an Assignment of Keyman Insurance Policies relating to the lives of Jeremy Paul Ridyard and Ronald Nelson Walker to be made between Barclays Bank PLC (1) Produmax (2) as soon as practicably possible after 17 March 1997

"the holder"

In relation to shares means the member whose name is entered in the register of members as the holder of the shares

"office"

The registered office of the Company

"Produmax"

Produmax Limited (Company Number: 878102)

"seal"

The common seal of the Company (if any)

"secretary"

The secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary

"share" Includes any interest in a share

"the United Kingdom" Great Britain and Northern Ireland.

Unless the context otherwise requires, words or expressions contained in these Articles and in Table A bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these Articles become binding on the Company. Regulation 1 of Table A shall not apply to the Company.

3. Share capital

- 3.1 The authorised share capital of the Company at the time of adoption of these Articles is £675,000 divided into 650,000 redeemable preference shares of £1.00 each (in these Articles referred to as the "preference shares") and 25,000 ordinary shares of £1.00 each (in these Articles referred to as the "ordinary shares").
- 3.2 Save as hereinafter expressly authorised the Directors shall allot relevant securities (as defined in the Act as authorised from time to time by the Company in general meeting in accordance with the provisions of Section 80 of the Act.
- 3.3 During the period of five years commencing with the date of incorporation the Directors shall have authority to allot or otherwise dispose of any shares of the Company up to the total amount which shall remain unissued to such persons and for such consideration and upon such terms and conditions as they may determine.
- 3.4 Regulation 4 of Table A and, in accordance with section 91(1) of the Act, sections 89(1) and 90(1) to (6) (inclusive) of the Act shall not apply to the Company.

4. Rights of preference shares

The rights attaching to the preference shares are as follows:-

4.1 as regards capital:-

on a return of capital on liquidation or otherwise the assets of the Company available for distribution among the members shall be applied first in repaying to the holders of the preference shares the amounts paid up on such shares but the preference shares shall not entitle the holders thereof to any further or other right of participation in the assets of the Company;

4.2 as regards issue of further preference shares:-

the Company shall not be entitled to issue any further shares ranking as regards participation in the profits and assets of the Company either in priority to or pari passu with the preference shares save with the consent or sanction of the holders of the preference shares given in accordance with the provisions of Article 6;

4.3 as regards redemption:-

4.3.1 subject to the provisions of the Act the Company shall redeem the preference shares for the sum detailed in Article 4.3.2 in accordance with the following Schedule:-

<u>Date for redemption</u>	<u>Number of preference shares to be redeemed</u>	<u>Distinguishing numbers of preference share to be redeemed</u>
28/02/2000	217,000	1 - 217,000
28/02/2001	217,000	217,001 - 434,000
28/02/2002	216,000	434,001 - 650,000

4.3.2 on redemption of any preference share the Company shall pay the holder of that share a sum equal to the nominal value of that share plus an additional premium worked out by following the three steps:-

step 1 subtracting 370,000 from the Defined Sum, provided that if the figure thus produced exceeds 395,000 that figure shall be deemed to be 395,000 and no more and further provided that if the figure thus produced has a negative value that figure shall be deemed to be zero and no less;

step 2 dividing the figure produced by step 1 by 395,000;

step 3 multiplying the figure produced by step 2 by £0.92.

4.3.3 At least one week before each of the three dates for redemption specified in Article 4.3.1 the Company shall give the holder of each of the preference shares to be redeemed a notice of redemption specifying the particular shares to be redeemed, the date fixed for redemption and the place at which the certificates for such shares are to be presented for redemption and upon such date each of the holders of the shares concerned shall be bound to deliver to the Company at such place the certificates for such of the shares concerned as are held by him in order that the same may be cancelled. Upon such delivery the Company shall pay to such holder (or, in the case of joint holders, to the holder whose name stands first in the register in respect of such shares) the amount then due to him in respect of such redemption.

4.4 as regards voting:-

4.4.1 the holders of the preference shares shall be entitled to receive notice of and to attend and vote at general meetings of the Company and any holder of preference shares shall be entitled to demand a poll at such meeting;

4.4.2 at any given time all the preference shares in issue combined shall carry between them a total of 5% of the total voting rights exercisable at a general meeting of the Company and accordingly each individual preference share shall be deemed to carry whatever number of votes or whatever fraction of a vote at such meeting as is consistent with this principle;

4.5 as regards transfer:

the holder of a preference share shall not have the right to transfer that share without first obtaining the written consent of every holder of ordinary shares in the capital of the Company.

5. Failure to redeem

If whether by reason of any principle of law or otherwise the Company is unable to redeem a preference share in accordance with Article 4 the following provisions shall apply:-

5.1 on the date the redemption of that preference share fell due (for each such preference share "the Due Date") the Company shall pay on account of the full sum that would have been due to the holder of that share if the share had been redeemed (for each such preference share the "Amount Due") the maximum sum (if any) which can then consistently with any such principle of law be properly paid by the Company;

5.2 on every succeeding day on which preference shares fall due for redemption the Company shall first redeem any preference shares it has previously failed to redeem on their Due Date or if unable to do so by reason of any principle of law or otherwise the Company shall pay to the holders of such shares an account of the Amount Due on such shares the maximum sum (if any) which can be paid by the Company consistently with such principle of law;

- 5.3 if after 28 February 2002 any preference shares have not been redeemed on every anniversary of such date the Company shall pay to the holders of such shares an account of the Amount Due on such shares the maximum sum (if any) which can consistently with all principles of law be properly paid by the Company;
- 5.4 interest shall accrue on the Amount Due on any preference share not redeemed on its Due Date on a daily basis from the Due Date until the date of actual payment at the rate of 2 per cent per annum above the base lending rate from time to time of Barclays Bank PLC and any such interest accrued shall be deemed to be part of the Amount Due on any preference share for the purpose of these Articles.

6. Modification of class rights

Subject to the Act, all or any of the special rights for the time being attached to any class of shares for the time being issued may from time to time (whether or not the Company is being wound up) be altered or abrogated with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of such shares. To any such separate general meeting all the provisions of the regulations of the Company as to general meetings of the Company shall mutatis mutandis apply, but so that the necessary quorum shall be one person holding or representing by proxy not less than one-third of the issued shares of the class. If such separate meeting shall be adjourned owing to the absence of a quorum and if at the adjourned meeting a quorum shall not be present within half-an-hour from the time appointed for such adjourned meeting the holder or holders of shares of the class concerned who are present in person or by proxy shall constitute a quorum. Every holder of shares of the class shall be entitled on a poll to one vote for every such share held by him and any holder of shares of the class present in person or by proxy may demand a poll.

13 - 05 - 97

7. Matters requiring consent of preference shareholders

With the exception of any of the provisions of the finance documents and notwithstanding any other provisions of these Articles so long as any preference shares shall remain unredeemed and except with such consent or sanction on the part of the preference shareholders as is required for a variation of the special rights attached to such shares (as provided in Article 6):-

- 7.1 the Company shall procure that Produmax shall not create any fixed or floating charge lien (other than a lien arising by operation of law) or other encumbrance over the whole or any part of Produmax's undertaking property or assets except for the purpose of securing indebtedness to its bankers for sums borrowed in the ordinary course of business;
- 7.2 the Company shall procure that Produmax shall not make any loan or advance or give any credit in excess of £50,000 (other than trade credit given in the ordinary course of business and the making of deposits with banks which are payable upon the giving of 7 days notice or less) to any person;
- 7.3 the Company shall procure that Produmax shall not give any guarantee or indemnity to secure the liabilities or obligations of any person other than in the ordinary course of its business;
- 7.4 the Company shall procure that Produmax shall not transfer lease or assign or make any other disposition of any of Produmax's undertaking property or assets (or any interest in them) worth more than £20,000 or contract so to do other than in the ordinary course of Produmax's business;
- 7.5 the Company shall procure that other than in the normal course of its business Produmax shall not enter into any contract arrangement or commitment involving expenditure on capital account or the realisation of capital assets if the amount or the aggregate amount

of the expenditure or realisation by Produmax will exceed £50,000 in relation to any such contract arrangement or commitment provided that for the purpose of this Article 7.5 the aggregate amount payable under any agreement for hire, hire purchase or purchase on credit sale or conditional sale terms is to be treated as capital expenditure incurred in the year in which the agreement is entered into.

- 7.6 the Company shall procure that Produmax shall not enter into any contract or a transaction except on an arm's length basis and in the ordinary course of its business;
- 7.7 the Company shall procure that Produmax shall not hold any shares debentures mortgages or securities of any kind (or any interest in such shares debentures mortgages or securities);
- 7.8 the Company shall procure that Produmax shall not vary the employment contract for Jeremy Paul Ridyard for time to time in force save for increasing the remuneration payable under the said employment contract from time to time by an amount justified by the rate of inflation and/or the performance of Produmax.
- 7.9 The Company shall procure that Produmax shall not release Jeremy Paul Ridyard from his obligations under clause 3 of his employment contract with Produmax dated 17 March 1997.
- 7.10 the Company shall not dispose (or divest itself of any of its interest in) any of the shares it holds in Produmax so that the Company shall continue to hold the entire issued share capital of Produmax absolutely;
- 7.11 the Company shall not and the Company shall procure that Produmax shall not appoint any director or enter into any contract so to do;

7.12 the Company shall not and the Company shall procure that Produmax shall not remove Ronald Nelson Walker of 97 St David's Road, Otley, West Yorkshire LS21 2RG as a director save for reasons of gross misconduct.

7.13 the Company shall not and the Company shall procure that Produmax shall not form, or acquire any interest in any business or company which competes with the business of Produmax.

8. Lien

The Company shall have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company whether or not in respect of the shares in question. Regulation 8 of Table A shall be modified accordingly.

9. Calls on shares and forfeiture

There shall be added at the end of the first sentence of regulation 18 of Table A, so as to increase the liability of any member in default in respect of a call, the words "and all expenses that may have been incurred by the Company by reason of such non-payment".

10. Proceedings at general meetings

The words "save that, if and for so long as the Company has only one person as a member, one member present in person or by proxy shall be a quorum" shall be added at the end of the second sentence of regulation 40 of Table A.

13 - 05 - 97

11. Voting of members

11.1 Regulation 54 of Table A shall not apply to the Company. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member entitled to vote who (being an individual) is present in person or by proxy (not being himself a member entitled to vote) or (being a corporate body) is present by a representative or proxy (not being himself a member entitled to vote) shall have one vote and, on a poll, every member shall have one vote for each share of which he is the holder.

11.2 The words "be entitled to" shall be inserted between the words "shall" and "vote" in regulation 57 of Table A.

11.3 A member shall not be entitled to appoint more than one proxy to attend on the same occasion and accordingly the final sentence of regulation 59 of Table A shall not apply to the Company. Any such proxy shall be entitled to cast the votes to which he is entitled in different ways.

12. Appointment and retirement of directors

12.1 The directors shall not be required to retire by rotation and regulations 73 to 80 (inclusive) of Table A shall not apply to the Company.

12.2 The Company may by ordinary resolution appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director.

12.3 The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number determined in accordance with regulation 64 of Table A as the maximum number of directors for the time being in force.

13. Gratuities and pensions

Regulation 87 of Table A shall not apply to the Company and the directors may exercise any powers of the Company conferred by its Memorandum of Association to give and provide pensions, annuities, gratuities or any other benefits whatsoever to or for past or present directors or employees (or their dependants) of the Company or any subsidiary or associated undertaking (as defined in section 27(3) of the Companies Act 1989) of the Company and the directors shall be entitled to retain any benefits received by them or any of them by reason of the exercise of any such powers.

14. Proceedings of the directors

14.1 Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any interest of his, a director notwithstanding his office:-

14.1.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

14.1.2 may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;

14.1.3 may, or any firm or company of which he is a member or director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;

14.1.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office, service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and

13 - 05 - 97

14.1.5 shall be entitled to vote on any resolution and (whether or not he shall vote) be counted in the quorum on any matter referred to in any of Articles 14.1.1 to 14.1.4 (inclusive) or on any resolution which in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever and if he shall vote on any resolution as aforesaid his vote shall be counted.

14.2 For the purposes of Article 14.1:-

14.2.1 a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;

14.2.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

14.2.3 an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when these Articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

14.3 Any director including an alternate director may participate in a meeting of the directors or a committee of the directors of which he is a member by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting and, subject to these Articles and the Act, he shall be entitled to vote and be counted in a quorum accordingly. 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.

14.4 Regulations 94 to 97 (inclusive) of Table A shall not apply to the Company.

15. The seal

If the Company has a seal it shall be used only with the authority of the directors or of a committee of the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined, every instrument to which the seal is affixed shall be signed by one director and by the secretary or another director. The obligation under regulation 6 of Table A relating to the sealing of share certificates shall only apply if the Company has a seal. Regulation 101 of Table A shall not apply to the Company.

16. Winding up

In regulation 117 of Table A, the words "with the like sanction" shall be inserted immediately before the words "determine how the division".

17. Indemnity

17.1 Subject to the provisions of section 310 of the Act every director (including an alternate director) or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the lawful execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 144 or section 727 of the Act in which relief is granted to him by the court, and no director (including an alternate director) or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the

13 - 05 - 97

Company in the lawful execution of the duties of his office or in relation thereto. Regulation 118 of Table A shall not apply to the Company.

- 17.2 The directors shall have power to purchase and maintain for any director, (including an alternate director) officer or auditor of the Company insurance against any such liability as is referred to in section 310 (1) of the Act and, subject to the provisions of the Act, against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a director, (including as an alternate director) officer or auditor.
- 17.3 The directors may authorise the directors of companies within the same group of companies as the Company to purchase and maintain insurance at the expense of the Company for the benefit of any director (including an alternate director), other officer or auditor of such company in respect of such liability, loss or expenditure as is referred to in Article 17.2.