

3859614

## COMPANIES ACT 1985

---

### PRIVATE COMPANY LIMITED BY SHARES

---

#### ARTICLES OF ASSOCIATION

- of -

#### AAVID THERMAL PRODUCTS UK HOLDINGS LIMITED

#### INTRODUCTORY

- 1.1 The Regulations contained or incorporated in Table A in the Schedule to The Companies (Tables A to F) Regulations 1985 as amended by The Companies (Tables A to F) Amendment Regulations 1985 (hereinafter called "Table A") shall apply to the Company, save insofar as they are varied or excluded by or are inconsistent with the following Articles.
- 1.2 In Regulation 1 of Table A, the words "and in Articles of Association adopting the same" shall be inserted after the word "regulations" in the last paragraph of that Regulation and the sentence "Any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force" shall be inserted at the end of that Regulation.
- 1.3 Regulations 40, 73 to 77 (inclusive), 80, 90, 94 to 98 (inclusive) and 118 of Table A shall not apply to the Company
- 2 In these Articles:-

**the Controlling Shareholder:** means the registered holder for the time being of more than one half in nominal value of the issued ordinary share capital of the Company and includes (for the avoidance of doubt) any member holding all of the issued ordinary share capital of the Company;

**Fixed Preference Dividend:** means the dividend referred to in Article 4.1.2, as increased (where relevant) pursuant to Article 4.1.3;

**the Nominee:** means any person holding shares in the Company as nominee or otherwise on trust, for the Controlling Shareholder;

**Ordinary Shares:** means the ordinary shares of £1 each in the capital of the Company;

**Ordinary Shareholders:** means the holders for the time being of the issued Ordinary Shares;



**paid up amount:** means in respect of any share, the amount paid or credited as paid up on that share, including sums paid, or credited as paid, by way of premium;

**Preference Shares:** means cumulative redeemable preference shares of £1 each in the capital of the Company;

**Preference Shareholders:** means the holders for the time being of the issued Preference Shares;

**Redemption Event:** means any event which results in either (i) the redemption by Fluent Holdings, Inc of its preferred stock or (ii) the redemption by Aavid Thermalloy LLC of its preference units.

## SHARE CAPITAL

3

3.1 The share capital of the Company is £7,520,200 divided into 200 ordinary shares of £1 each and 7,520,000 Preference Shares.

3.2 In these Articles, unless the context requires otherwise, references to Preference Shares and Ordinary Shares shall include shares of those respective classes created and/or issued after the date of adoption of these Articles and ranking pari passu in all respects (or in all respects save only as to the date from which such shares rank for dividend) with the shares of the relevant class then in issue.

## SHARE RIGHTS

4 The Preference Shares and Ordinary Shares shall have, and be subject to, the following rights and restrictions:-

### 4.1 Income

4.1.1 Sums distributed by the Company in or in respect of any financial year shall, to the extent sufficient for the purpose, be applied in the following order of priority:-

4.1.1.1 first, in paying any arrears or accruals of the Fixed Preference Dividend;

4.1.1.2 secondly, in paying to the Preference Shareholders in respect of that year a fixed net cash cumulative dividend in respect of each Preference Share held at the rate per annum of 10 per cent on the paid up amount;

4.1.1.3 thirdly, any balance which the Company may resolve to distribute shall be apportioned amongst the Ordinary Shareholders in proportion to the numbers of such shares held by them respectively.

4.1.2 The Fixed Preference Dividend:-

- 4.1.2.1 shall accrue daily and shall be payable quarterly, on the last day of each quarter, in every year, the first dividend to be payable on 31 March 2000 in respect of the period from the date of issue of the Preference Shares to that date;
- 4.1.2.2 shall be due and payable on the dates stipulated, and notwithstanding the fact that they are expressed to be "cumulative" the amounts due and payable on those dates shall without any resolution of the directors or the Company in general meeting (and notwithstanding anything contained in Regulations 102 to 105 (inclusive) of Table A) become a debt due from and immediately payable by the Company to the Preference Shareholders (subject only to there being profits out of which the dividends may lawfully be paid).
- 4.1.3 Any amounts in respect of the Fixed Preference Dividend not paid on the due date shall (whether or not there were available to the Company any distributable profits or other funds out of which the same could have been paid and whether or not payment was prohibited or restricted by any provision in the Financing Documents) be increased by an amount equivalent to interest thereon at 2 per cent per annum until the actual date of payment, such amount accruing daily and being compounded at yearly rests.
- 4.2 **Capital**
  - On a return of capital on liquidation or otherwise the surplus assets of the Company remaining after payment of its liabilities shall be applied:-
  - 4.2.1 first, in repaying to the Preference Shareholders:-
    - 4.2.1.1 the paid up amount on each Preference Share held;
    - 4.2.1.2 any arrears or accruals of the Fixed Preference Dividend, calculated down to the date of the return of capital irrespective of whether such dividends have been declared or not; and
    - 4.2.1.3 any premium which would have been payable under Article 4.3.5.3 if all the Preference Shares then in issue had been redeemed on the date of the return of capital;
  - 4.2.2 secondly, in repaying to the Ordinary Shareholders the paid up amount on each Ordinary Share held; and
  - 4.2.3 thirdly, the balance (if any) shall be distributed amongst the Ordinary Shareholders in proportion to the numbers of such Shares held by them respectively.
- 4.3 **Redemption**
  - 4.3.1 The Company shall have the right at any time subject to:-
    - 4.3.1.1 the provisions of the Act; and

4.3.1.2 all arrears and accruals of the Fixed Preference Dividend having been paid or satisfied in full;

to redeem the whole or any number of the Preference Shares for the time being in issue on giving to the holders of the Preference Shares to be redeemed not less than one month's notice in writing.

4.3.2 The Company shall in any event, subject to the provisions of the Act, redeem all of the Preference Shares (or so many as then remain unredeemed) on 30 June 2015 provided that if the Company shall be unable, in compliance with the provisions of the Act, to redeem all or any of the Preference Shares in accordance with this Article 4.3.2 on the date specified then the Company shall on that date redeem so many of such Shares as it is able and shall redeem the balance of such Shares as soon after such date as the Company shall be able to do so in compliance with the provisions of the Act.

4.3.3 The Company shall in the event of a Redemption Event redeem the Preference Shares or so many of them as are then in issue. The Company shall give to the Preference Shareholders such advance notice as may be practicable of a redemption in accordance with this paragraph.

4.3.4 In the case of any partial redemption under this Article 4.3, the Company shall redeem a proportion of the holding of each Preference Shareholder corresponding to the proportion which the number of Preference Shares proposed to be redeemed bears to the number of Preference Shares in issue immediately prior to the date of the proposed redemption.

4.3.5 There shall be paid on each Preference Share redeemed:-

4.3.5.1 the paid up amount;

4.3.5.2 any arrears or accruals of the Fixed Preference Dividend, calculated down to the date of redemption irrespective of whether such dividends have been earned or declared or not; and

4.3.5.3 in the event that default has been made in redeeming such Preference Share on the date on which redemption was required, (irrespective of whether there were available to the Company sufficient profits or other funds out of which such redemption could have been made and whether or not redemption was prohibited or restricted by any provision of the Financing Documents) a premium equivalent to interest on the paid up amount at 2 per cent per annum in respect of the period from the due date for redemption until the actual date of redemption, such amount accruing daily and to be compounded at yearly rests.

4.3.6 If the Company shall, on any date fixed for redemption, fail to redeem any Preference Shares to be redeemed on that date (irrespective of whether there were available to the Company sufficient profits or other funds out of which such redemption could have been made), the Fixed Preference Dividend shall continue

to accrue on those shares, and the provisions of Article 4.1.2 shall continue to apply. The Fixed Preference Dividend shall cease to accrue:

4.3.6.1 as from the date of redemption on any Preference Shares redeemed;

4.3.6.2 as from the due date for redemption on any Preference Shares not redeemed due to a failure by the Preference Shareholder concerned to comply with Article 4.3.7.

4.3.7 Redemption shall take place at the office, or such other place in the United Kingdom as the Company may notify in writing to the Preference Shareholders. On the due date each of the holders of the Preference Shares to be redeemed shall deliver to the Company at such place the certificates for those of the shares to be redeemed which are held by him in order that they may be cancelled. Upon such delivery the Company shall pay to the holder the amount due to him in respect of such redemption. If any certificate delivered to the Company includes any Preference Shares which are not to be redeemed on that occasion a fresh certificate for those shares shall be issued to the holder.

#### 4.4 Voting

4.4.1 On a show of hands every Ordinary Shareholder who (being an individual) is present in person or (being a corporation) is present by a representative shall have one vote and on a poll every Ordinary Shareholder who is present in person or by a proxy or (being a corporation) by a representative shall have one vote for every Ordinary Share of which he is the holder.

4.4.2 Whilst the Preference Shareholders shall be entitled to receive notice of, and attend, all general or other meetings of the Company they shall not be entitled to vote at such meeting in respect of the Preference Shares held by them unless:-

4.4.2.1 at the date of the notice or requisition to convene the meeting the Fixed Preference Dividend is one month in arrear (by reference to the payment dates stipulated in Article 4.1.2.1) or any Preference Shares due to be redeemed in accordance with Article 4.3 shall have remained unredeemed for a period exceeding one month from the due date for redemption (whether or not there were sufficient profits or other funds available out of which such dividends could be paid or redemption could be made and whether or not payment or redemption was prohibited or restricted by any provision of the Financing Documents); or

4.4.2.2 the business of the meeting is or includes the consideration of a resolution for winding-up the Company or a resolution for reducing the Company's share capital or a resolution varying or abrogating any of the rights or restrictions attached to the Preference Shares (in which case the Preference Shareholders shall be entitled to vote only on such resolution)

and in such circumstances on a show of hands every Preference Shareholder who (being an individual) is present in person or (being a corporation) is present by a

representative shall have one vote and on a poll every Preference Shareholder who is present in person or by a proxy or (being a corporation) by a representative shall have one vote for every Preference Share of which he is the holder.

## SHARE ISSUES

- 5 No share or beneficial interest in a share shall be issued or allotted to any person other than the Controlling Shareholder or some other person expressly approved by the Controlling Shareholder in writing, but subject to that all the unissued shares for the time being in the capital of the Company shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons, at such times and on such terms and conditions as they think proper, subject to Section 80 of the Act and provided that no share shall be issued at a discount.

- 6 The provisions of Sections 89(1) and 90(1) to (6) of the Act shall not apply to the Company.

## TRANSFER OF SHARES

7

- 7.1 The Directors may, in their absolute discretion and without giving any reason, refuse to register the transfer of any share in the capital of the Company, whether fully or partly paid save that the Directors shall be obliged to register any transfer of shares made to or by, or with the express written consent of the Controlling Shareholder, or made pursuant to Article 7.2. In its application to the Company Regulation 24 of Table A shall be modified by the deletion of the first sentence.

- 7.2 The Controlling Shareholder may at any time by notice given to the Nominee at the registered address of the Nominee shown in the Register of Members of the Company require the Nominee to transfer all or any shares registered in his name to the Controlling Shareholder or any other person specified in the notice for no consideration. If the Nominee shall fail, within 48 hours after service of the notice, to transfer the shares in question, the Directors may authorise any person to execute on behalf of and as attorney for the Nominee any necessary instrument of transfer and shall cause the name of the transferee to be entered in the Register as the holder of the shares in question. After the name of the transferee has been entered in the Register in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

- 7.3 Notwithstanding anything contained in this Article 7, the Directors shall not decline to register any transfer of shares, nor may they suspend registration thereof where such a transfer is executed by Aavid Thermalloy, LLC or Fluent UK Holdings, Limited, any bank or institution to whom such shares have been charged by way of security (whether as attorney of Aavid Thermalloy, LLC or Fluent UK Holdings, Limited or otherwise) or by any nominee of such a bank or institution, in each case pursuant to the power of sale under such security, and a certificate by any official of such bank or institution that the shares were so charged and the transfer was so executed shall be conclusive evidence of such facts.

## **LIEN**

- 8           The lien referred to in Regulation 8 of Table A incorporated into the Articles of Association of the Company shall not apply to any share registered in the name of Aavid Thermalloy LLC or Fluent UK Holdings, Limited.

## **GENERAL MEETINGS**

- 9           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. One member holding more than one half in nominal value of the issued ordinary share capital of the Company for the time being and present in person or by proxy or representative shall constitute a quorum and shall be deemed for this purpose to constitute a valid meeting but, save in such a case two members present in person or by proxy or representative shall be a quorum.

## **DIRECTORS**

- 10          In its application to the Company, Regulation 64 of Table A shall be modified by the deletion of the word "two" and the substitution of the word "one".
- 11          The Controlling Shareholder shall have the right at any time and from time to time to appoint one or more persons to be a Director or Directors of the Company. Any such appointment shall be effected by notice in writing to the Company by the Controlling Shareholder and the Controlling Shareholder may in like manner at any time and from time to time remove from office any Director (whether or not appointed by him or it pursuant to this Article).
- 12          In its application to the Company, Regulation 65 of Table A shall be modified by the deletion of the words "approved by resolution of the Directors and".
- 13
- 13.1        In its application to the Company, Regulation 78 of Table A shall be modified by the deletion of the words "... and may also determine the rotation in which any additional Directors are to retire".
- 13.2        In its application to the Company, Regulation 79 of Table A shall be modified by the deletion of the second and third sentences.
- 13.3        In its application to the Company, Regulation 84 of Table A shall be modified by the deletion of the third and final sentences.
- 14          In its application to the Company, Regulation 81 of Table A shall be modified by the deletion of paragraph (e) and the substitution of the following paragraph:-
- "(e)   he is removed from office under the provisions of Article 8 of the Company's Articles of Association."

## **PROCEEDINGS OF DIRECTORS**

- 15          The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in their number. A sole Director shall have authority to exercise all

powers and discretions vested in the Directors and, in its application to the Company, Regulation 89 of Table A shall be modified accordingly.

- 16 A Director may vote at a meeting of the Directors, and form part of a quorum present at that meeting, in relation to any matter in which he has, directly or indirectly, an interest or duty which conflicts or which may conflict with the interests of the Company, provided that he has previously disclosed the nature of such duty or interest to the Directors. The provisions of Regulation 86 of Table A shall be taken to apply equally to any disclosure to be made under the provisions of this Article.

### **EXECUTION OF DOCUMENTS**

- 17 In its application to the Company, Regulation 101 of Table A shall be modified by the addition of the following sentence:-

“Any instrument expressed to be executed by the Company and signed by two Directors or one Director and the Secretary by the authority of the Directors or of a committee authorised by the Directors shall (to extent permitted by the Act) have effect as if executed by affixing the seal.”

### **INDEMNITY**

- 18 Subject to section 310 of the Act:-

- 18.1 every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation to his office, 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 727 of the Act in which relief is granted to him by the Court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or otherwise in relation to his office;

- 18.2 the Company may purchase and maintain insurance for any such Director or other officer against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

### **TELEPHONE BOARD MEETINGS**

- 19 Any Director who participates in the proceedings of a meeting by means of a communication device (including a telephone) which allows all the other Directors present at such meeting (whether in person or by alternate or by means of such type of communication device) to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (whether in person or by alternate or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.