

**COMPANY NUMBER: 07754689**

**THE COMPANIES ACT 2006  
COMPANY LIMITED BY SHARES  
NEW  
ARTICLES OF ASSOCIATION**

of

**REDBACKS CUSHIONING LIMITED**

(Adopted by a written resolution passed on 4<sup>th</sup> November 2020)

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**1. INTRODUCTION**

1.1 The model articles for private companies limited by shares contained or incorporated in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the Date of Adoption (the "**Model Articles**") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.

1.2 In these Articles and the Model Articles 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.

1.3 In these Articles:

- (a) article headings are used for convenience only and shall not affect the construction or interpretation of these Articles;
- (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa; and
- (c) Articles 8(2), 9(4), 10(3), 11(2), 13, 14, 17(2), 17(3), 19, 21, 26(5), 27, 28, 29, 30(5) to (7) (inclusive), 44(4), 51, 52 and 53 of the Model Articles shall not apply to the Company.

**2. DEFINITIONS**

In these Articles the following words and expressions shall have the following meanings:

"**Accepting Shareholder**" has the meaning given in Article 15.5;

"**Act**" means the Companies Act 2006 (as amended from time to time);

"**Acting in Concert**" has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

"**Allocation Notice**" has the meaning given in Article 12.8(b)(ii);

"**Asset Sale**" means the sale, lease, transfer, exclusive licence or other disposition by the Company of all or substantially all of its undertaking and assets;

**"Associate"** in relation to any person means:

- (a) any person who is an associate of that person and the question of whether a person is an associate of another is to be determined in accordance with section 435 of the Insolvency Act 1986 and (whether or not an associate as so determined);
- (b) any Member of the same Group; or
- (c) any Member of the same Fund Group.

**"Auditors"** means the auditors of the Company from time to time;

**"Available Profits"** means profits available for distribution within the meaning of Part 23 of the Act;

**"Board"** means the board of Directors and any committee of the board constituted for the purpose of taking any action or decision contemplated by these Articles;

**"Bonus Issue"** or **"Reorganisation"** means any return of capital, bonus issue of shares or other securities of the Company by way of capitalisation of profits or reserves or any consolidation or sub-division or redenomination or any repurchase or redemption of shares or any variation in the subscription price or conversion rate applicable to any other outstanding shares of the Company in each case other than shares issued as a result of the events set out in Article 8.6;

**"Business Day"** means a day on which English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

**"Called Shareholders"** has the meaning given in Article 16.1;

**"Called Shares"** has the meaning given in Article 16.2;

**"Chairman"** has the meaning given in Article 21.2;

**"Civil Partner"** means in relation to a Shareholder, a civil partner (as defined in the Civil Partnership Act 2004) of the Shareholder;

**"Company"** means Redbacks Cushioning Limited;

**"Controlling Interest"** means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the CTA 2010;

**"Convertible"** means any instrument that carries a right to convert into or to subscribe for, purchase or otherwise acquire shares in the capital of the Company;

**"CTA 2010"** means the Corporation Tax Act 2010;

**"Date of Adoption"** means the date on which these Articles were adopted;

**"Director(s)"** means a director or directors of the Company from time to time;

**"Director Consent"** means the prior written consent of the Investor Director (if any) and (for so long as they are directors) the Founders or the approval of all such directors of a matter at a board meeting of the Company;

**"Distributable Funds"** has the meaning given in Article 5.1;

**"Drag Along Notice"** has the meaning given in Article 16.2;

**"Drag Along Option"** has the meaning given in Article 16.1;

**"Drag Shareholders"** has the meaning given in Article 16.1;

**"Drag Shares"** has the meaning given in Article 16.1;

**"Effective Termination Date"** means the date on which an Employee's employment or consultancy relationship with the Company terminates;

**"electronic address"** has the same meaning as in section 333 of the Act;

**"electronic form"** and **"electronic means"** have the same meaning as in section 1168 of the Act;

**"Eligible Director"** means a Director who would be entitled to vote on a matter had it been proposed as a resolution at a meeting of the Directors;

**"Employee"** means an individual who is employed by or who provides consultancy services to, the Company or any member of the Group (and for the avoidance of doubt the provision of services as a non-executive director shall not constitute consultancy services);

**"Encumbrance"** means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including without limitation any retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

**"Expert Valuer"** is as determined in accordance with Article 13.1;

**"Fair Value"** is as determined in accordance with Article 13.3;

**"Family Trusts"** means as regards any particular individual member or deceased or former individual member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the shares in question is for the time being vested in any person other than the individual and/or Privileged Relations of that individual; and so that for this purpose a person shall be considered to be beneficially interested in a share if such share or the income thereof is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons;

**"Financial Institution"** means any financial investor authorised by or registered with the Financial Services Authority or the Financial Conduct Authority or the Prudential Regulation Authority (as the case may be) (or a financial investor registered with the equivalent body or authority in the country of the relevant financial investor's principal place of business);

**"Financial Year"** means an accounting reference period (as defined by the Act) of the Company;

**"Founders"** means Clifford Philip Lockyer and Alison Nicola Lockyer and **"Founder"** means any of the Founders;

**"Fund Manager"** means a person whose principal business is to make, manage or advise upon investments in securities;

**"Group"** means the Company and its Subsidiary Undertaking(s) (if any) from time to time;

**"hard copy form"** has the same meaning as in section 1168 of the Act;

**"Holding Company"** means a newly formed holding company, pursuant to which the membership, pro rata shareholdings and classes of shares comprised in such holding company matches that of the Company immediately prior to the transfer of the issued share capital of the Company to such holding company;

**"Interested Director"** has the meaning given in Article 22.5;

**"Investment Agreement"** means the Investment Agreement dated on or around the Date of Adoption;

**"Investor Director"** means a Director appointed in accordance with Article 19.2;

**"Investor(s)"** has the meaning given to it in the Investment Agreement;

**"ITEPA"** means Income Tax (Earnings and Pensions) Act 2003;

**"Member of the same Fund Group"** means if the Shareholder is a fund, partnership, company, syndicate or other entity whose business is managed by a Fund Manager (an **"Investment Fund"**) or a nominee of that person:

- (a) any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund (but only in connection with the dissolution of the Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course of business);
- (b) any Investment Fund managed by that Fund Manager;
- (c) any Parent Undertaking or Subsidiary Undertaking of that Fund Manager, or any Subsidiary Undertaking of any Parent Undertaking of that Fund Manager;  
or
- (d) any trustee, nominee or custodian of such Investment Fund and vice versa;

**"Member of the same Group"** means as regards any company, a company which is from time to time a Parent Undertaking or a Subsidiary Undertaking of that company or a Subsidiary Undertaking of any such Parent Undertaking;

**"Minimum Transfer Condition"** has the meaning given in Article 12.2;

**"Model Articles"** has the meaning given in the Article 1.1;

**"New Securities"** means any shares or other securities convertible into, or carrying the right to subscribe for, those shares issued by the Company after the Date of Adoption (other than shares or securities issued as a result of the events set out in Article 8.6);

**"New Shareholder"** has the meaning given in Article 16.10;

**"New Shares"** has the meaning given in Article 16.10;

**"Offer"** has the meaning given in Article 15.2;

**"Offeree"** has the meaning given in Article 12.7;

**"Offer Period"** has the meaning given in Article 15.3;

**"Ordinary Shareholders"** means the holders from time to time of the Ordinary Shares;

**"Ordinary Shares"** or **"Shares"** means the ordinary shares of £0.001 each in the capital of the Company;

**"Original Shareholder"** has the meaning given in Article 11.1;

**"Parent Undertaking"** has the meaning set out in section 1162 of the Act;

**"Permitted Transfer"** means a transfer of shares in the capital of the Company in accordance with Article 11;

**"Permitted Transferee"** means:

- (a) in relation to a Shareholder who is an individual any of his Privileged Relations or Trustees or a Qualifying Company;
- (b) in relation to a Shareholder which is an undertaking (as defined in section 1161(1) of the Act) means any Member of the same Group;
- (c) in relation to a Shareholder which is an Investment Fund means any Member of the same Fund Group;
- (d) in relation to an Investor:
  - (i) any Member of the same Group;
  - (ii) any Member of the same Fund Group;
  - (iii) any other Investor; or
  - (iv) any nominee of an Investor.

**"Priority Rights"** means the rights of Shareholders to purchase Shares contained in a Transfer Notice in the priority stipulated in Article 12.6;

**"Privileged Relation"** in relation to a Shareholder who is an individual member or deceased or former member means a spouse, Civil Partner, child or grandchild (including step or adopted or illegitimate child and their issue);

**"Proceeds of Sale"** means the consideration payable (including any deferred consideration) whether in cash or otherwise to those Shareholders selling shares under a Share Sale;

**"Proposed Purchaser"** means a proposed purchaser who at the relevant time has made a bona fide offer on arm's length terms;

**"Qualifying Company"** means a company in which a Shareholder or Trustee(s) holds the whole of the share capital and which they control;

**"Qualifying Person"** has the meaning given in section 318(3) of the Act;

**"Recipient"** has the meaning given in Article 25;

**"Recipient Group Companies"** has the meaning given in Article 25;

**"Relevant Interest"** has the meaning set out in Article 22.5;

**"Relevant Majority"** means Shareholders holding at least 75% of the Ordinary Shares which shall include the Founders (for so long as they or their Permitted Transferees hold any Ordinary Shares) and on the death or incapacity of any Founder, any Permitted Transferees of such Founder who hold any Ordinary Shares;

**"Relevant Majority Consent"** means the prior written consent of a Relevant Majority;

**"Sale Shares"** has the meaning set out in Article 12.2(a) of these Articles;

**"Seller"** has the meaning set out in Article 12.2 of these Articles;

**"Share Sale"** means the sale of (or the grant of a right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the purchaser of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring a Controlling Interest in the Company, except where following completion of the sale the shareholders and the proportion of shares held by each of them are the same as the shareholders and their shareholdings in the Company immediately prior to the sale;

**"Shareholder"** means any holder of any shares in the capital of the Company from time to time;

**"Subsidiary"** and **"Subsidiary Undertaking"** have the respective meanings set out in sections 1159 and 1162 of the Act;

**"Supplemental Consideration"** has the meaning given in Article 15.7(a);

**"Surplus Shares"** has the meaning given in Article 12.7(e);

**"Transfer Notice"** shall have the meaning given in Article 12.2;

**"Transfer Price"** shall have the meaning given in Article 12.2(c);

**"Treasury Shares"** means shares in the capital of the Company held by the Company as treasury shares from time to time within the meaning set out in section 724(5) of the Act;

"Trustees" in relation to a Shareholder who is an individual, means the trustee or the trustees of a Family Trust;

### **3. SHARE CAPITAL**

- 3.1 In these Articles, unless the context requires otherwise, references to shares of a particular class shall include shares allotted and/or issued after the Date of Adoption and ranking *pari passu* in all respects (or in all respects except only as to the date from which those shares rank for dividend) with the shares of the relevant class then in issue.
- 3.2 Whenever as a result of a consolidation of shares any Shareholders would become entitled to fractions of a share, the Directors may, on behalf of those Shareholders, sell the shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those Shareholders, and the Directors may authorise any person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.
- 3.3 When the Company sub-divides or consolidates all or any of its shares, the Company may, subject to the Act and to these Articles, by ordinary resolution determine that, as between the shares resulting from the sub-division or consolidation, any of them may have any preference or advantage or be subject to any restriction as compared with the others.
- 3.4 The words "and the directors may determine the terms, conditions and manner of redemption of any such shares" shall be deleted from Model Article 22(2) of the Model Articles.
- 3.5 In Model Article 25(2) of the Model Articles, the words "payment of a reasonable fee as the directors decide" in paragraph (c) shall be deleted and replaced by the words "payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine".
- 3.6 Subject to the Act, the Company may purchase its own shares with cash to the extent permitted by section 692(1)(b) of the Act.

### **4. DIVIDENDS**

Subject to the Act and these Articles, the Board may pay interim dividends if justified by the Available Profits in respect of the relevant period.

### **5. EXIT PROVISIONS AND DISTRIBUTIONS**

- 5.1 On a Share Sale or on a distribution of assets on a liquidation or a return of capital (other than a conversion, redemption or purchase of shares), the Proceeds of Sale or the surplus assets of the Company remaining after payment of its liabilities (the "Surplus") (as the case may be) (such Proceeds of Sale or Surplus hereinafter referred to as the "Distributable Funds") shall be distributed among the holders of Ordinary Shares *pro rata* to the number of Ordinary Shares held.
- 5.2 On an Asset Sale the surplus assets of the Company remaining after payment of its liabilities shall be distributed (to the extent that the Company is lawfully permitted to do so) in the order of priority set out in this Article 5 provided always that if it is not lawful for the Company to distribute its surplus assets in accordance with the

provisions of these Articles, the Shareholders shall take any lawful action required by an Relevant Majority (including, but without prejudice to the generality of this Article 5.2, actions that may be necessary to put the Company into voluntary liquidation) so that this Article 5 applies.

## **6. VOTES IN GENERAL MEETING**

6.1 The Ordinary Shares shall confer on each holder of Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.

6.2 Where shares confer a right to vote, on a show of hands each holder of such 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 on a poll each such holder so present shall have one vote for each such share held by him.

## **7. VARIATION OF RIGHTS**

7.1 Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding up) with the consent in writing of the holders of at least seventy-five per cent (75%) in nominal value of the issued shares of that class.

7.2 The creation of a new class of shares which has preferential rights to one or more existing classes of shares shall not constitute a variation of the rights of those existing classes of shares.

## **8. ALLOTMENT OF NEW SHARES OR OTHER SECURITIES: PRE-EMPTION**

8.1 Sections 561(1) and 562(1) to (5) (inclusive) of the Act do not apply to an allotment of equity securities made by the Company.

8.2 Unless otherwise agreed with an Relevant Majority Consent and by special resolution passed in general meeting or as a written resolution passed in accordance with Chapter 2 of Part 13 of the Act, if the Company proposes to allot any New Securities those New Securities shall not be allotted to any person unless the Company has in the first instance offered them to the Shareholders on the same terms and at the same price as those New Securities are being offered to other persons on a pro rata basis to the number of Ordinary Shares held by those holders (as nearly as may be without involving fractions). The offer shall be in writing, give details of the number and subscription price of the New Securities and the period (being not less than 10 Business Days) within which the offer must be accepted (the "**Subscription Period**").

8.3 If, at the end of the Subscription Period, the number of New Securities applied for is less than the number of New Securities being offered, the New Securities shall be allotted to the Shareholders in accordance with their applications and any remaining New Securities shall be offered to any other person as the Directors may determine at the same price and on the same terms as the offer to the holders of Ordinary Shares.

8.4 If, at the end of the Subscription Period, the number of New Securities applied for is equal to or exceeds the number of New Securities, the New Securities shall be allotted to the Shareholders who have applied for New Securities on a pro rata basis to the number of Ordinary Shares held by such Equity Shareholder which procedure shall be repeated until all New Securities have been allotted (as nearly as may be without

involving fractions or increasing the number allotted to any Equity Shareholder beyond that applied for by him).

- 8.5 Subject to Articles 8.2 and 8.3 and to the provisions of section 551 of the Act, any New Securities shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper.
- 8.6 The provisions of Articles 8.2 and 8.3 shall not apply to:
- (a) options to subscribe for Ordinary Shares under any employee share option plans;
  - (b) New Securities issued in consideration of the acquisition by the Company of any company or business which has been approved in writing by the Board (with a Director Consent);
  - (c) New Securities issued as a result of a Bonus Issue of shares which has been approved in writing with a Director Consent;
  - (d) New Securities issued upon the conversion of any debenture, warrant, option or other convertible security;
  - (e) The issues of Ordinary Shares provided for under the Investment Agreement;
  - (f) The issue of up to 11,000,000 Ordinary Shares at a pre-money valuation of not less than £2,916,666 at any time on or prior to 30 September 2019 to investors to raise equity finance for the Company; and
  - (g) Shares issuable upon a share split or subdivision.
- 8.7 An Investor may assign all or any portion of its rights under this Article 8 to a Permitted Transferee.
- 8.8 No shares shall be allotted to any Employee, Director, prospective employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, unless such person has entered into a joint section 431 ITEPA election with the Company for the full disapplication of Chapter 2 of Part 7 of ITEPA.

## **9. LIEN**

The Company shall have a first and paramount lien on every share not fully paid for all and any indebtedness of any holder of it to the Company (whether a sole holder or one of two or more joint holders), whether or not that indebtedness or liability is in respect of the shares concerned and whether or not it is presently payable.

## **10. TRANSFERS OF SHARES - GENERAL**

- 10.1 In Articles 10 to 16 inclusive, reference to the transfer of a share includes the transfer or assignment of a beneficial or other interest in that share or the creation of a trust or Encumbrance over that share and reference to a share includes a beneficial or other interest in a share.
- 10.2 No share may be transferred unless the transfer is made in accordance with these Articles.

- 10.3 If a Shareholder transfers or purports to transfer a share otherwise than in accordance with these Articles he will be deemed immediately to have served a Transfer Notice in respect of all shares held by him.
- 10.4 Any transfer of a share by way of sale which is required to be made under Articles 12 to 16 (inclusive) will be deemed to include a warranty that the transferor sells with full title guarantee.
- 10.5 The Directors may refuse to register a transfer if:
- (a) it is a transfer of a share to a bankrupt, a minor or a person of unsound mind;
  - (b) the transfer is to an Employee, Director or prospective employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, and such person has not entered into a joint section 431 ITEPA election with the Company;
  - (c) it is a transfer of a share which is not fully paid:
    - (i) to a person of whom the Directors do not approve; or
    - (ii) on which share the Company has a lien;
  - (d) the transfer is not lodged at the registered office or at such other place as the Directors may appoint; or
  - (e) the transfer is not accompanied by the certificate for the shares to which it relates (or an Indemnity for a lost certificate in a form acceptable to the Board) and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

If the Directors refuse to register a transfer, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

- 10.6 The Directors may, as a condition to the registration of any transfer of shares in the Company (whether pursuant to a Permitted Transfer or otherwise), require the transferee to execute and deliver to the Company a deed agreeing to be bound by the terms of the Investment Agreement or any other shareholders' agreement or similar document in force between some or all of the Shareholders and the Company in any form as the Directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the proposed transferor under any such agreement or other document) and if any condition is imposed in accordance with this Article 10.6 the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.
- 10.7 To enable the Directors to determine whether or not there has been any disposal of shares in the capital of the Company (or any interest in shares in the capital of the Company) in breach of these Articles the Directors (acting with a Director Consent) may require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any transfer lodged for registration or any other person who the Directors may reasonably believe to have information relevant to that purpose, to furnish to the Company such information and evidence which the Directors may request regarding any matter which they deem relevant to that purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the shares in the capital of the Company from time to time

registered in the holder's name. If the information or evidence is not provided to enable the Directors to determine to their reasonable satisfaction that no breach has occurred, or where as a result of the information and evidence the Directors are reasonably satisfied that a breach has occurred, the Directors shall with the approval of a Director Consent immediately notify the holder of such shares in writing of that fact and the following shall occur:

- (a) the relevant shares shall cease to confer upon the holder of them (including any proxy appointed by the holder) any rights:
  - (i) to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting or on a written resolution of the Company or at any separate meeting or on a written resolution of the class in question); or
  - (ii) to receive dividends or other distributions otherwise attaching to those shares or to any further shares issued in respect of those shares; and
- (b) the holder may be required at any time following receipt of the notice to transfer some or all of its shares to any person(s) at the price that the Directors with a Director Consent may require by notice in writing to that holder.

The rights referred to in (a) above may be reinstated by the Board and shall in any event be reinstated upon the completion of any transfer referred to in (b) above.

10.8 In any case where the Board requires a Transfer Notice to be given in respect of any shares, if a Transfer Notice is not duly given within a period of 10 Business Days of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period. If a Transfer Notice is required to be given or is deemed to have been given under these Articles, the Transfer Notice will be treated as having specified that:

- (a) the Transfer Price for the Sale Shares will be as agreed between the Board (the votes of any director who is a Seller or with whom the Seller is connected (within the meaning of section 252 of the Act) being disregarded) and the Seller, or, failing agreement within five Business Days after the date on which the Board becomes aware that a Transfer Notice has been deemed to have been given, will be the Fair Value of the Sale Shares;
- (b) it does not include a Minimum Transfer Condition (as defined in Article 12.2(d));
- (c) the Seller wishes to transfer all of the Ordinary Shares held by it.

10.9 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of:

- (a) the transferor; and
- (b) (if any of the shares is partly or nil paid) the transferee.

## 11. PERMITTED TRANSFERS

11.1 A Shareholder (the "**Original Shareholder**") may transfer all or any of his or its Ordinary Shares to a Permitted Transferee without restriction as to price or otherwise.

- 11.2 Where under the provision of a deceased Shareholder's will or laws as to intestacy, the persons legally or beneficially entitled to any shares, whether immediately or contingently, are Permitted Transferees of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any share to those Permitted Transferees, in each case without restriction as to price or otherwise. Shares previously transferred as permitted by this Article 11.2 may be transferred by the transferee to any other Permitted Transferee of the Original Shareholder without restriction as to price or otherwise.
- 11.3 If a Permitted Transferee who was a Member of the same Group as the Original Shareholder ceases to be a Member of the same Group as the Original Shareholder, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the shares held by it to the Original Shareholder or a Member of the same Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to have given a Transfer Notice in respect of those shares.
- 11.4 If a Permitted Transferee who was a Member of the same Fund Group as the Original Shareholder ceases to be a Member of the same Fund Group as the Original Shareholder (other than as part of a process leading to the dissolution or liquidation of the Original Shareholder), the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the shares held by it to the Original Shareholder or a Member of the same Fund Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to have given a Transfer Notice in respect of those shares.
- 11.5 Trustees may (i) transfer shares to a Qualifying Company or (ii) transfer shares to the Original Shareholder or to another Permitted Transferee of the Original Shareholder or (iii) transfer shares to the new or remaining trustees upon a change of Trustees without restrictions as to price or otherwise.
- 11.6 No transfer of shares may be made to Trustees unless the Board is satisfied:
- (a) with the terms of the trust instrument and in particular with the powers of the trustees;
  - (b) with the identity of the proposed trustees;
  - (c) the proposed transfer will not result in 50% or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and
  - (d) that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 11.7 If a company to which a share has been transferred under Article 11.5 ceases to be a Qualifying Company it must within five Business Days of so ceasing, transfer the shares held by it to the Trustees or to a Qualifying Company (and may do so without restriction as to price or otherwise) failing which it will be deemed to have given a Transfer Notice in respect of such shares.
- 11.8 If a Permitted Transferee who is a spouse or Civil Partner of the Original Shareholder ceases to be a spouse or Civil Partner of the Original Shareholder whether by reason of divorce or otherwise he or she must, within 15 Business Days of so ceasing either:

- (a) execute and deliver to the Company a transfer of the shares held by him to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) for such consideration as may be agreed between them; or
  - (b) give a Transfer Notice to the Company in accordance with Article 12.2, failing which he or she shall be deemed to have given a Transfer Notice.
- 11.9 On the death (subject to Article 11.2), bankruptcy, liquidation, administration or administrative receivership of a Permitted Transferee (other than a joint holder) his personal representatives or trustee in bankruptcy, or its liquidator, administrator or administrative receiver must within five Business Days after the date of the grant of probate, the making of the bankruptcy order or the appointment of the liquidator, administrator or the administrative receiver execute and deliver to the Company a transfer of the shares held by the Permitted Transferee without restriction as to price or otherwise. The transfer shall be to the Original Shareholder if still living (and not bankrupt or in liquidation) or, if so directed by the Original Shareholder, (or if the Original Shareholder has died), to any Permitted Transferee of the Original Shareholder. If the transfer is not executed and delivered within five Business Days of such period or if the Original Shareholder has died or is bankrupt or is in liquidation, administration or administrative receivership, the personal representative or trustee in bankruptcy or liquidator, administrator or administrative receiver will be deemed to have given a Transfer Notice.
- 11.10 Any shares may at any time be transferred where there is a sale of the entire issued share capital of the Company to a Holding Company, which has been approved by a majority of the Board including a Director Consent.

**12. TRANSFERS OF SHARES SUBJECT TO PRE-EMPTION RIGHTS**

- 12.1 Save where the provisions of Articles 11 , 15 or 16 apply, any transfer of shares by a Shareholder shall be subject to the pre-emption rights contained in this Article 12.
- 12.2 A Shareholder who wishes to transfer Shares (a "**Seller**") shall, except as otherwise provided in these Articles, before transferring or agreeing to transfer any Shares give notice in writing (a "**Transfer Notice**") to the Company specifying:
- (a) the number of Shares which he wishes to transfer (the "**Sale Shares**");
  - (b) if he wishes to sell the Sale Shares to a third party, the name of the proposed transferee;
  - (c) the price at which he wishes to transfer the Sale Shares (the "**Transfer Price**"); and
  - (d) whether the Transfer Notice is conditional on all or a specific number of the Sale Shares being sold to Shareholders (a "**Minimum Transfer Condition**").

If no cash price is specified by the Seller, the Transfer Price must be agreed by the Board (including a Director Consent). In addition, if the price is not specified in cash, an equivalent cash value price must be agreed between the Seller and the Board (including a Director Consent). In both cases, the price will be deemed to be Fair Value of the Sale Shares if no price is agreed within 5 Business Days of the Company receiving the Transfer Notice.

- 12.3 Except with the written consent of the Board (including a Director Consent), no Transfer Notice once given or deemed to have been given under these Articles may be withdrawn.
- 12.4 A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares at the Transfer Price.
- 12.5 As soon as practicable following the later of:
- (a) receipt of a Transfer Notice; and
  - (b) in the case where the Transfer Price has not been agreed, the determination of the Transfer Price under Article 13,

the Board shall offer the Sale Shares for sale to Shareholders in the manner set out in Article 12.6. Each offer must be in writing and give details of the number and Transfer Price of the Sale Shares offered.

#### **12.6 Priority offer of Sale Shares**

The Sale Shares shall be offered in the following priority:

- (a) first, to the Company (subject to the provisions of the Act);
- (b) second, to the Shareholders (pro rata to their existing holdings of Ordinary Shares)

in each case on the basis set out in Article 12.7.

#### **12.7 Transfers: Offer**

- (a) The Board shall offer the Sale Shares pursuant to the Priority Rights to the persons specified in Article 12.6 above (the "**Offerees**") inviting them to apply in writing within the period from the date of the offer to the date 15 Business Days after the offer (inclusive) (the "**Offer Period**") for the maximum number of Sale Shares they wish to buy.
- (b) If the Sale Shares are subject to a Minimum Transfer Condition then any allocation made under this Article 12.7 will be conditional on the fulfilment of the Minimum Transfer Condition.
- (c) If, at the end of the Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each Offeree in the proportion (fractional entitlements being rounded to the nearest whole number) which his existing holding of Ordinary Shares bears to the total number of Ordinary Shares held by all Offerees who have applied for Sale Shares but no allocation shall be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.
- (d) If not all Sale Shares are allocated in accordance with Article 12.6(b) but there are applications for Sale Shares that have not been satisfied, those Sale Shares that have not yet been allocated shall be allocated to the relevant applicant(s) in accordance with the procedure set out in Article 12.6(b), which procedure shall be repeated until all Sale Shares have been allocated.

- (e) If, at the end of the Offer Period the number of Sale Shares applied for is less than the number of Sale Shares (and, if the Sale Shares are Ordinary Shares, only after an offer has been made first to the Company and second to the Shareholders), the Board shall allocate the Sale Shares to the Offerees in accordance with their applications and the balance (the "**Surplus Shares**") will be dealt with in accordance with Article 12.8(e).

## **12.8 Completion of transfer of Sale Shares**

- (a) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for by Offerees is less than the Minimum Transfer Condition the Board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under Article 12.6 stating the condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.
- (b) If:
  - (i) the Transfer Notice does not include a Minimum Transfer Condition; or
  - (ii) if the transfer Notice does include a Minimum Transfer Condition and the number of Sale Shares applied of is equal to or greater than the Minimum Transfer Condition,

the Board shall, when no further offers are required to be made under Article 12.6, give written notice of allocation (an "**Allocation Notice**") to the Seller and each person to whom Sale Shares have been allocated (an "**Applicant**") specifying the number of Sale Shares allocated to each Applicant and the place and time (being not less than 10 Business Days nor more than 20 Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares.

- (c) Upon service of an Allocation Notice, the Seller must, against payment of the Transfer Price, transfer the Sale Shares in accordance with the requirements specified in it.
- (d) If the Seller fails to comply with the provisions of Article 12.8(c):
  - (i) the chairman of the Company or, failing him, one of the directors, or some other person nominated by a resolution of the Board, may on behalf of the Seller:
    - (A) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
    - (B) receive the Transfer Price and give a good discharge for it; and
    - (C) (subject to the transfer being duly stamped) enter the Applicants in the register of Shareholders as the holders of the shares purchased by them; and
  - (ii) the Company shall pay the Transfer Price into a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered to the Company his certificate or certificates for the relevant

shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate).

- (e) If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 12.8(f), the Seller may, within eight weeks after service of the Allocation Notice, transfer the Surplus Shares to any person at a price at least equal to the Transfer Price provided that the sale of the Surplus Shares shall continue to be subject to any Minimum Transfer Condition.
  - (f) The right of the Seller to transfer shares under Article 12.8(e) does not apply if the Board is of the opinion on reasonable grounds that:
    - (i) the transferee is a person (or a nominee for a person) who the Board determines in their absolute discretion is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company or who the Board otherwise determines acting in good faith is unsuitable to be a Shareholder;
    - (ii) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
    - (iii) the Seller has failed or refused to provide promptly information available to it or him and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above.
- 12.9 The restrictions imposed by this Article 12 may be waived in relation to any proposed transfer of shares by a Relevant Majority Consent.
- 12.10 An Investor may assign all or any portion of its rights under this Article 12 to a Permitted Transferee.
- 13. VALUATION OF SHARES**
- 13.1 If no Transfer Price can be agreed between the Seller and the Board in accordance with the provisions of Articles 10.8 or 12.2 then, on the date of failure to reach agreement (in accordance with the time limits set out in Article 10.8(a), the Board shall either:
- (a) appoint an expert valuer in accordance with Article 13.2 (the "**Expert Valuer**") to certify the Fair Value of the Sale Shares; or
  - (b) (if the Fair Value has been certified by an Expert Valuer within the preceding 12 weeks) specify that the Fair Value of the Sale Shares will be calculated by dividing any Fair Value so certified by the number of Sale Shares to which it related and multiplying such Fair Value by the number of Sale Shares the subject of the Transfer Notice.
- 13.2 The Expert Valuer will be either:
- (a) the Auditors; or
  - (b) an independent firm of Chartered Accountants to be agreed between the Board (with a Director Consent) and the Seller or failing agreement not later than the date 10 Business Days after the date of service of the Transfer Notice to be nominated by the then President of the Institute of Chartered Accountants in England and Wales on the application of either party and approved by the Company.

- 13.3 The "**Fair Value**" of the Sale Shares shall be determined by the Expert Valuer on the following assumptions and bases:
- (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;
  - (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
  - (c) that the Sale Shares are capable of being transferred without restriction;
  - (d) valuing the Sale Shares as a rateable proportion of the total value of all the issued Ordinary Shares without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent; and
  - (e) reflecting any other factors which the Expert Valuer reasonably believes should be taken into account-
- 13.4 If any difficulty arises in applying any of these assumptions or bases then the Expert Valuer shall resolve that difficulty in whatever manner it shall in its absolute discretion think fit.
- 13.5 The Expert Valuer shall be requested to determine the Fair Value within 20 Business Days of its appointment and to notify the Board of its determination.
- 13.6 The Expert Valuer shall act as expert and not as arbitrator and its determination shall be final and binding on the parties (in the absence of fraud or manifest error).
- 13.7 The Board will give the Expert Valuer access to all accounting records or other relevant documents of the Company subject to it agreeing such confidentiality provisions as the Board may reasonably impose.
- 13.8 The Expert Valuer shall deliver its certificate to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Seller. Unless the shares are to be sold under a Transfer Notice, which is deemed to have been served, the Seller may by notice in writing to the Company within five Business Days of the service on him of the copy certificate, cancel the Company's authority to sell the Sale Shares.
- 13.9 The cost of obtaining the certificate shall be paid by the Company unless:
- (a) the Seller cancels the Company's authority to sell; or
  - (b) the sale is pursuant to a Transfer Notice which is deemed to have been served, and the Sale Price certified by the Expert Valuer is less than the price (if any) offered by the directors to the Seller for the Sale Share before Expert Valuer was instructed,

in which case the Seller shall bear the cost.

#### **14. COMPULSORY TRANSFERS - GENERAL**

- 14.1 A person entitled to a share in consequence of the bankruptcy of a Shareholder shall be deemed to have given a Transfer Notice in respect of that share at a time determined by the Directors.

- 14.2 If a share remains registered in the name of a deceased Shareholder for longer than one year after the date of his death the Directors may require the legal personal representatives of that deceased Shareholder either:
- (a) to effect a Permitted Transfer of such shares (including for this purpose an election to be registered in respect of the Permitted Transfer); or
  - (b) to show to the satisfaction of the Directors that a Permitted Transfer will be effected before or promptly upon the completion of the administration of the estate of the deceased Shareholder.

If either requirement in this Article 14.2 shall not be fulfilled to the satisfaction of the Directors a Transfer Notice shall be deemed to have been given in respect of each such share save to the extent that, the Board may otherwise determine.

- 14.3 If a Shareholder which is a company or a Permitted Transferee of that Shareholder, either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets (other than as part of a bona fide restructuring or reorganisation), the relevant Shareholder (and/ or any of its Permitted Transferees) shall be deemed to have given a Transfer Notice in respect of all the shares held by the relevant Shareholder and/or such Permitted Transferee save to the extent that, and at a time, the Directors may determine.
- 14.4 If there is a change in control (as control is defined in section 1124 of the CTA 2010) of any Shareholder which is a company, it shall be bound at any time, if and when required in writing by the Directors to do so, to give (or procure the giving in the case of a nominee) a Transfer Notice in respect of all the shares registered in its and their names and their respective nominees' names save that in the case of a Permitted Transferee, it shall first be permitted to transfer those shares back to the Original Shareholder from whom it received its shares or to any other Permitted Transferee before being required to serve a Transfer Notice. This Article 14.4 shall not apply to a member that is an Investor.

## 15. MANDATORY OFFER ON CHANGE OF CONTROL

- 15.1 Except in the case of Permitted Transfers and transfers pursuant to Articles 14, after going through the pre-emption procedure in Article 12, the provisions of Article 15.2 will apply if one or more Shareholders ("**Proposed Sellers**") proposes to transfer in one or a series of related transactions any Ordinary Shares (the "**Proposed Transfer**") which would, if put into effect, result in any Proposed Purchaser (and Associates of his or persons Acting in Concert with him) acquiring a Controlling Interest in the Company.
- 15.2 A Proposed Seller must, before making a Proposed Transfer, procure the making by the Proposed Purchaser of an offer (the "**Offer**") to all other holders of Ordinary Shares to acquire all of the Ordinary Shares for a consideration per share the value of which is at least equal to the Specified Price (as defined in Article 15.7).
- 15.3 The Offer must be given by written notice (a "**Proposed Sale Notice**") at least 10 Business Days (the "**Offer Period**") prior to the proposed sale date ("**Proposed Sale Date**"). The Proposed Sale Notice must set out, to the extent not described in any accompanying documents, the identity of the Proposed Purchaser, the purchase price and other terms and conditions of payment, the Proposed Sale Date and the number of shares proposed to be purchased by the Proposed Purchaser (the "**Proposed Sale Shares**").

- 15.4 If any other holder of Ordinary Shares is not given the rights accorded him by this Article, the Proposed Sellers will not be entitled to complete their sale and the Company and the Directors will not register any transfer intended to carry that sale into effect.
- 15.5 If the Offer is accepted by any Shareholder (an "**Accepting Shareholder**") within the Offer Period, the completion of the Proposed Transfer will be conditional on the completion of the purchase of all the shares held by Accepting Shareholders.
- 15.6 The Proposed Transfer is subject to the pre-emption provisions of Article 12 but the purchase of the Accepting Shareholders' shares shall not be subject to Article 12.
- 15.7 For the purpose of this Article:
- (a) the expression "**Specified Price**" shall mean in respect of each share a sum in cash equal to the highest price per share offered or paid by the Proposed Purchaser:
- (i) in the Proposed Transfer; or
- (ii) in any related or previous transaction by the Proposed Purchaser or any person Acting in Concert with the Proposed Purchaser in the 12 months preceding the date of the Proposed Transfer,

plus an amount equal to the Relevant Sum, as defined in Article 15.7(b), of any other consideration (in cash or otherwise) paid or payable by the Proposed Purchaser or any other person Acting in Concert with the Proposed Purchaser, which having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the shares, provided however that the aggregate consideration shall be distributed in accordance with Article 5 if that Article is applicable (the "**Supplemental Consideration**");

- (b) **Relevant Sum** =  $C \div A$

where:

A = number of Ordinary Shares being sold in connection with the relevant-Proposed Transfer; and

C = the Supplemental Consideration.

## 16. DRAG-ALONG

- 16.1 If the holders of not less than 75% in number of Ordinary Shares including the Founders and any of their Permitted Transferees (where they hold any Shares at the relevant time) (the "**Drag Shareholders**") wish to transfer all their interest in shares (the "**Drag Shares**") to a Proposed Purchaser, then the Drag Shareholders shall have the option (the "**Drag Along Option**") to require all the other holders of shares (the "**Called Shareholders**") to sell and transfer all their shares to the Proposed Purchaser or as the Proposed Purchaser shall direct in accordance with the provisions of this Article.
- 16.2 The Drag Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a "**Drag Along Notice**") to the Company which the Company shall forthwith copy to the Called Shareholders at any time before the transfer of the Drag

Shares to the Proposed Purchaser. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their shares (the "**Called Shares**") under this Article, the person to whom they are to be transferred, the consideration for which the Called Shares are to be transferred (calculated in accordance with this Article) and the proposed date of transfer.

- 16.3 Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Drag Shares by the Drag Shareholders to the Proposed Purchaser within 40 Business Days after the date of service of the Drag Along Notice. The Drag Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 16.4 The consideration (in cash or otherwise) for which the Called Shareholders shall be obliged to sell each of the Called Shares shall be that to which they would be entitled if the total consideration proposed to be paid by the Proposed Purchaser were distributed to the holders of the Called Shares and the Drag Shares in accordance with the provisions of Article 5.
- 16.5 No Drag Along Notice may require a Called Shareholder to agree to any terms except those specifically provided for in this Article, such that without limitation no Called Shareholder shall be required to provide any warranty or representation (except as to title and capacity and then only on the basis that the Called Shareholder's maximum liability shall be limited to the consideration actually received by such Called Shareholder inclusive of all costs and expenses of the claim) or indemnity.
- 16.6 Within five Business Days of the Drag Shareholders serving a Drag Along Notice on the Called Shareholders, the Called Shareholders shall deliver stock transfer forms for their Shares in favour of the Proposed Purchaser or as the Proposed Purchaser shall direct, together with the relevant share certificate(s) (or an indemnity for any lost certificate in a form acceptable to the Board) to the Company. On the expiration of that five Business Day period the Company shall pay the Called Shareholders, on behalf of the Proposed Purchaser, the consideration they are due pursuant to Article 16.4 to the extent the Proposed Purchaser has paid such consideration to the Company. The Company's receipt for the consideration due pursuant to Article 16.4 shall be a good discharge to the Purchaser. The Company shall hold the amounts due to the Called Shareholders pursuant to Article 16.4 in trust for the Called Shareholders without any obligation to pay interest.
- 16.7 To the extent that the Proposed Purchaser has not, on the expiration of such five Business Day period, paid the consideration due to the Company pursuant to Article 16.4, the Called Shareholders shall be entitled to the immediate return of the stock transfer forms and share certificate (or an indemnity for any lost certificate in a form acceptable to the Board) for the relevant shares and the Called Shareholders shall have no further rights or obligations under this Article 16 in respect of the relevant Drag Along Notice.
- 16.8 If a Called Shareholder fails to deliver stock transfer forms and share certificates (or suitable indemnity) for its shares to the Company upon the expiration of such five Business Day period, the Company and each Director shall be constituted the agent of such defaulting Called Shareholder for taking such actions as are necessary to effect the transfer of the Called Shareholder's shares and, the Directors shall, if requested by the Proposed Purchaser, authorise any Director to transfer the Called Shareholder's shares on the Called Shareholder's behalf to the Proposed Purchaser (or its nominee(s)) to the extent the Proposed Purchaser has, at the expiration of that five Business Day period, paid the consideration due to the Company pursuant to Article 16.4 for the Called Shareholder's shares offered to him. The Board shall then authorise

registration of the transfer once appropriate stamp duty has been paid. The defaulting Called Shareholder shall surrender his share certificate for his shares (or suitable indemnity) to the Company. On surrender, he shall be entitled to the consideration due to him pursuant to Article 16.4.

- 16.9 A transfer of shares to a Proposed Purchaser (or as they may direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served shall not be subject to the provisions of Article 12.
- 16.10 If any new shares ("**New Shares**") are issued to any person, following the issue of a Drag Along Notice pursuant to the exercise of an option to acquire shares in the Company or pursuant to the conversion of any convertible security of the Company (a "**New Shareholder**"), a Drag Along Notice shall be deemed to have been served on the New Shareholder in respect of their New Shares on the same terms as the previous Drag Along Notice and the New Shareholder shall then be bound to sell and transfer all such New Shares to the Proposed Purchaser or as the Proposed Purchaser may direct and the provisions of this Article shall apply with the necessary changes to the New Shareholder except that completion of the sale of the New Shares shall take place immediately on the Drag Along Notice being deemed served on the New Shareholder.

## 17. GENERAL MEETINGS

- 17.1 If the Directors are required by the Shareholders under section 303 of the Act to call a general meeting, the Directors shall convene the meeting for a date not later than 28 days after the date on which the Directors became subject to the requirement under section 303 of the Act.
- 17.2 If any two or more Shareholders (or Qualifying Persons representing two or more Shareholders) attend the meeting in different locations, the meeting shall be treated as being held at the location specified in the notice of the meeting, save that if no one is present at that location so specified, the meeting shall be deemed to take place where the largest number of Qualifying Persons is assembled or, if no such group can be identified, at the location of the chairman.
- 17.3 If a demand for a poll is withdrawn under Model Article 44(3) of the Model Articles, the demand shall not be taken to have invalidated the result of a show of hands declared before the demand was made and the meeting shall continue as if the demand had not been made.
- 17.4 Polls must be taken in such manner as the chairman directs. A poll demanded on the election of a chairman or on a question of adjournment must be held immediately. A poll demanded on any other question must be held either immediately or at such time and place as the chairman directs not being more than 14 days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded.
- 17.5 No notice need be given of a poll not held immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
- 17.6 If the poll is to be held more than 48 hours after it was demanded the Shareholders shall be entitled to deliver proxy notices in respect of the poll at any time up to 24 hours before the time appointed for taking that poll. In calculating that period, no account shall be taken of any part of a day that is not a working day.

## **18. PROXIES**

18.1 Paragraph (c) of Model Article 45(1) of the Model Articles shall be deleted and replaced by the words: "is signed by or on behalf of the shareholder appointing the proxy and accompanied by the authority under which it is signed (or a certified copy of such authority or a copy of such authority in some other way approved by the directors)".

18.2 The instrument appointing a proxy and any authority under which it is signed or a certified copy of such authority or a copy in some other way approved by the Directors may:

- (a) be sent or supplied in hard copy form, or (subject to any conditions and limitations which the Board may specify) in electronic form, to the registered office of the Company or to such other address (including electronic address) as may be specified for this purpose in the notice convening the meeting or in any instrument of proxy or any invitation to appoint a proxy sent or supplied by the Company in relation to the meeting at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote;
- (b) be delivered at the meeting or adjourned meeting at which the person named in the instrument proposes to vote to the chairman or to the company secretary or to any Director; or
- (c) in the case of a poll, be delivered at the meeting at which the poll was demanded to the chairman or to the company secretary or to any Director, or at the time and place at which the poll is held to the Chairman or to the company secretary or to any Director or scrutineer,

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

## **19. NUMBER AND APPOINTMENT OF DIRECTORS**

19.1 The number of Directors shall not be more than 6.

19.2 For so long as it (with its Permitted Transferees) hold not less than 5% of the issued shares in the capital of the Company, The Abercorn Company S.A shall be entitled

19.2.1 to nominate a person to act as a director of the Company (and as a member of each and any committee of the Board) and/or

19.2.2 to appoint a representative to attend as an observer who will be entitled to speak at any such meetings but will not be entitled to vote.

by notice in writing addressed to the Company from time to time and the other Shareholders shall not vote their shares so as to remove any director so appointed from office. The Abercorn Company S.A. shall be entitled to remove any director or observer so appointed by it at any time by notice in writing to the Company signed by any of its officers served at its registered office and appoint another person to act in his place. Any appointment shall be subject to the approval by the Founders of the relevant person, such approval not to be unreasonably withheld or delayed. The Founders shall be able to require the Abercorn Company S.A. to replace any director and/or observer provided they exercise such right in good faith on reasonable grounds.

- 19.3 Appointment and removal of the Investor Director shall be by written notice to the Company which shall take effect on delivery at its registered office or at any meeting of the Board or committee thereof.
- 19.4 The Investor Director and the Founders (if directors) shall be entitled at their request to be appointed to any committee of the Board established from time to time and to the board of directors of any Subsidiary Undertaking.
- 19.5 For so long as they (with their Permitted Transferees) hold not less than 5% of the issued shares in the capital of the Company, each Founder shall be entitled to act as a director of the Company (and as a member of each and any committee of the Board).
- 19.6 Any Director may appoint as an alternate any other Director, or any other person approved by Director Consent, to exercise that Director's powers and carry out that Director's responsibilities in relation to the taking of decisions by the Directors, in the absence of the appointing Director. Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointing Director, or in any other manner approved by the Directors.

## **20. DISQUALIFICATION OF DIRECTORS**

In addition to that provided in Model Article 18 of the Model Articles, the office of a Director shall also be vacated if he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated.

## **21. PROCEEDINGS OF DIRECTORS**

- 21.1 The quorum for Directors' meetings shall be two Director(s) which shall include (where one is appointed) an Investor Director and one of the Founders (if appointed) (save that where a Relevant Interest of a Director is being authorised by other Directors in accordance with section 175(5)(a) of the Act, such Director and any other interested Director shall not be included for the purpose of such authorisation but shall be included for the purpose of forming the quorum at the meeting). If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or at such time and place as determined by the Directors present at such meeting. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed, then the meeting shall proceed.
- 21.2 The directors may appoint a director to chair their meetings (the "**Chairman**").
- 21.3 If all the Directors participating in a meeting of the Directors are not physically in the same place, the meeting shall be deemed to take place where the largest group of participators in number is assembled. In the absence of a majority the location of the chairman shall be deemed to be the place of the meeting.
- 21.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company at any time before or after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 21.5 Provided (if these Articles so require) that he has declared to the Directors, in accordance with the provisions of these Articles, the nature and extent of his interest (and subject to any restrictions on voting or counting in a quorum imposed by the

Directors in authorising a Relevant Interest), a Director may vote at a meeting of the Directors or of a committee of the Directors on any resolution concerning a matter in which he has an interest, whether a direct or an indirect interest, or in relation to which he has a duty and shall also be counted in reckoning whether a quorum is present at such a meeting.

- 21.6 Questions arising at any meeting of the Directors shall be decided by a majority of votes. In the case of any equality of votes, the chairman shall not have a second or casting vote.
- 21.7 A decision of the Directors may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing (including confirmation given by electronic means). Reference in Model Article 7(1) of the Model Articles to Model Article 8 of the Model Articles shall be deemed to include a reference to this Article also.

## **22. DIRECTORS' INTERESTS**

### **Specific interests of a Director**

- 22.1 Subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, a Director may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest of the following kind:
- (a) where a Director (or a person connected with him) is party to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or proposed contract, arrangement or transaction with the Company or any other undertaking in which the Company is in any way interested;
  - (b) where a Director (or a person connected with him) is a director, employee or other officer of, or a party to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
  - (c) where a Director (or a person connected with him) is a shareholder in the Company or a shareholder in, employee, director, member or other officer of, or consultant to, a Parent Undertaking of, or a Subsidiary Undertaking of a Parent Undertaking of, the Company;
  - (d) where a Director (or a person connected with him) holds and is remunerated in respect of any office or place of profit (other than the office of Auditor) in respect of the Company or body corporate in which the Company is in any way interested;
  - (e) where a Director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the Company or any body corporate in which the Company is in any way interested;
  - (f) where a Director (or a person connected with him or of which he is a member or employee) acts (or any body corporate promoted by the Company or in which the Company is in any way interested of which he is a director, employee or other officer may act) in a professional capacity for the Company or any body corporate promoted by the Company or in which the Company is in any way

interested (other than as Auditor) whether or not he or it is remunerated for this;

- (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (h) any other interest authorised by ordinary resolution.

#### **Interests of an Investor Director**

22.2 In addition to the provisions of Article 22.1, subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, where a Director is an Investor Director he may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest arising from any duty he may owe to, or interest he may have as an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or direct or indirect investor (including without limitation by virtue of a carried interest, remuneration or incentive arrangements or the holding of securities) in:

- (a) his appointing Investor;
- (b) a Fund Manager which manages or advises or manages such Investor;
- (c) any of the funds advised or managed by a Fund Manager who advises or manages such Investor from time to time; or
- (d) another body corporate or firm in which a Fund Manager who advises or manages such Investor or any fund managed or advised by such Fund Manager has directly or indirectly invested, including without limitation any portfolio companies.

#### **Interests of which a Director is not aware**

22.3 For the purposes of this Article 22, an interest of which a Director is not aware and of which it is unreasonable to expect him to be aware shall not be treated as an interest of his.

#### **Accountability of any benefit and validity of a contract**

22.4 In any situation permitted by this Article 22 (save as otherwise agreed by him) a Director shall not by reason of his office be accountable to the Company for any benefit which he derives from that situation and no such contract, arrangement or transaction shall be avoided on the grounds of any such interest or benefit.

#### **Terms and conditions of Board authorisation**

22.5 Subject to Article 22.6, any authority given in accordance with section 175(5)(a) of the Act in respect of a Director ("**Interested Director**") who has proposed that the Directors authorise his interest ("**Relevant Interest**") pursuant to that section may, for the avoidance of doubt:

- (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising Directors as they see fit from time to time, including, without limitation:

- (i) restricting the Interested Director from voting on any resolution put to a meeting of the Directors or of a committee of the Directors in relation to the Relevant Interest;
  - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the Directors or of a committee of the Directors where such Relevant Interest is to be discussed; or
  - (iii) restricting the application of the provisions in Articles 22.7 and 22.8, so far as is permitted by law, in respect of such Interested Director;
- (b) be withdrawn, or varied at any time by the Directors entitled to authorise the Relevant Situation as they see fit from time to time; and

subject to Article 22.6 an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising Directors pursuant to section 175(5)(a) of the Act and this Article 22.

#### **Terms and conditions of Board authorisation for an Investor Director**

- 22.6 Notwithstanding the other provisions of this Article 22, it shall not (save with the consent in writing of an Investor Director) be made a condition of any authorisation of a matter in relation to each Investor Director in accordance with section 175(5)(a) of the Act, that he shall be restricted from voting or counting in the quorum at any meeting of, or of any committee of the Directors or that he shall be required to disclose, use or apply confidential information as contemplated in Article 22.8.

#### **Director's duty of confidentiality to a person other than the Company**

- 22.7 Subject to Article 22.8 (and without prejudice to any equitable principle or rule of law which may excuse or release the Director from disclosing information, in circumstances where disclosure may otherwise be required under this Article 22), if a Director, otherwise than by virtue of his position as director, receives information in respect of which he owes a duty of confidentiality to a person other than the Company, he shall not be required:
- (a) to disclose such information to the Company or to any Director, or to any officer or employee of the Company; or
  - (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of his duties as a Director.

- 22.8 Where such duty of confidentiality arises out of a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company, Article 22.7 shall apply only if the conflict arises out of a matter which falls within Article 22.1 or Article 22.2 or has been authorised under section 175(5)(a) of the Act.

#### **Additional steps to be taken by a Director to manage a conflict of interest**

- 22.9 Where a Director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the Director may take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the Directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by

the Directors for the purpose of or in connection with the situation or matter in question, including without limitation:

- (a) absenting himself from any discussions, whether in meetings of the Directors or otherwise, at which the relevant situation or matter falls to be considered; and
- (b) excluding himself from documents or information made available to the Directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for him to have access to such documents or information.

#### **Requirement of a Director to declare an interest**

22.10 Subject to section 182 of the Act, a Director shall declare the nature and extent of any interest permitted by Article 22.1 or Article 22.2 at a meeting of the Directors, or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the Act or in such other manner as the Directors may determine, except that no declaration of interest shall be required by a Director in relation to an interest:

- (a) falling under Article 22.1(g);
- (b) if, or to the extent that, the other Directors are already aware of such interest (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
- (c) if, or to the extent that, it concerns the terms of his service contract (as defined by section 227 of the Act) that have been or are to be considered by a meeting of the Directors, or by a committee of Directors appointed for the purpose under these Articles.

#### **Shareholder approval**

22.11 Subject to section 239 of the Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 22.

22.12 For the purposes of this Article 22:

- (a) a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (b) the provisions of section 252 of the Act shall determine whether a person is connected with a Director;
- (c) 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.

## **23. NOTICES**

23.1 Subject to the requirements set out in the Act, any notice given or document sent or supplied to or by any person under these Articles, or otherwise sent by the Company under the Act, may be given, sent or supplied:

- (a) in hard copy form; or
- (b) in electronic form,

or partly by one of these means and partly by another of these means.

Notices shall be given and documents supplied in accordance with the procedures set out in the Act, except to the extent that a contrary provision is set out in this Article 23.

### **Notices in hard copy form**

23.2 Any notice or other document in hard copy form given or supplied under these Articles may be delivered or sent by first class post (airmail if overseas):

- (a) to the Company or any other company at its registered office; or
- (b) to the address notified to or by the Company for that purpose; or
- (c) in the case of an intended recipient who is a member or his legal personal representative or trustee in bankruptcy, to such member's address as shown in the Company's register of members; or
- (d) in the case of an intended recipient who is a Director or alternate, to his address as shown in the register of Directors; or
- (e) to any other address to which any provision of the Companies Acts (as defined in the Act) authorises the document or information to be sent or supplied; or
- (f) where the Company is the sender, if the Company is unable to obtain an address falling within one of the addresses referred to in (a) to (e) above, to the intended recipient's last address known to the Company.

23.3 Any notice or other document in hard copy form given or supplied under these Articles shall be deemed to have been served and be effective:

- (a) if delivered, at the time of delivery;
- (b) if posted, on receipt or 48 hours after the time it was posted, whichever occurs first.

### **Notices in electronic form**

23.4 Subject to the provisions of the Act, any notice or other document in electronic form given or supplied under these Articles may:

- (a) if sent by fax or email (provided that a fax number or an address for email has been notified to or by the Company for that purpose), be sent by the relevant form of communication to that address;

- (b) if delivered or sent by first class post (airmail if overseas) in an electronic form (such as sending a disk by post), be so delivered or sent as if in hard copy form under Article 23.2; or
  - (c) be sent by such other electronic means (as defined in section 1168 of the Act) and to such address(es) as the Company may specify by notice (in hard copy or electronic form) to all members of the Company from time to time.
- 23.5 Any notice or other document in electronic form given or supplied under these Articles shall be deemed to have been served and be effective:
- (a) if sent by facsimile or email (where a fax number or an address for email has been notified to or by the Company for that purpose), on receipt or 48 hours after the time it was sent, whichever occurs first;
  - (b) if posted in an electronic form, on receipt or 48 hours after the time it was posted, whichever occurs first;
  - (c) if delivered in an electronic form, at the time of delivery; and
  - (d) if sent by any other electronic means as referred to in Article 23.4(c), at the time such delivery is deemed to occur under the Act.
- 23.6 Where the Company is able to show that any notice or other document given or sent under these Articles by electronic means was properly addressed with the electronic address supplied by the intended recipient, the giving or sending of that notice or other document shall be effective notwithstanding any receipt by the Company at any time of notice either that such method of communication has failed or of the intended recipient's non-receipt.

### **General**

- 23.7 In the case of joint holders of a share all notices shall be given to the joint holder whose name stands first in the register of members of the Company in respect of the joint holding (the "**Primary Holder**"). Notice so given shall constitute notice to all the joint holders.
- 23.8 Anything agreed or specified by the Primary Holder in relation to the service, sending or supply of notices, documents or other information shall be treated as the agreement or specification of all the joint holders in their capacity as such (whether for the purposes of the Act or otherwise).

## **24. INDEMNITIES AND INSURANCE**

- 24.1 Subject to the provisions of the Act:
- (a) without prejudice to any indemnity to which a Director or officer of the Company may otherwise be entitled, every Director or other officer of the Company (other than the Auditors) shall be entitled to be indemnified out of the assets of the Company against all costs, losses, liabilities and expenses which he may sustain or incur in or about the execution of the duties of his, her or its office or otherwise in relation to his, her or its office, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his, her or its favour or in which he is acquitted or in connection with any application under sections 144 or 727 of the Act or sections 661(3) or (4) or 1157 of the Act in which relief is granted to him by the

court, and no Director or other officer (other than the Auditors) 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, her or its office or otherwise in relation to his, her or its office;

- (b) the Directors may exercise all the powers of the Company to 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.

- 24.2 If requested by an Relevant Majority, the Company shall (at the cost of the Company) effect and maintain for each Director policies of insurance insuring each Director against risks in relation to his office as each director may reasonably specify including without limitation, any liability which by virtue of any rule of law may attach to him in respect of any negligence, default of duty or breach of trust of which he may be guilty in relation to the Company.

## 25. DATA PROTECTION

Each of the Shareholders and Directors consent to the processing of their personal data by the Company, the Shareholders and Directors (each a "**Recipient**") for the purpose of due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information among themselves. A Recipient may process the personal data either electronically or manually. The personal data which may be processed under this Article shall include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any shares (or other investment or security) in the Company. Other than as required by law, court order or other regulatory authority, that personal data may not be disclosed by a Recipient or any other person except to a Member of the same Group ("**Recipient Group Companies**") and to employees, directors and professional advisers of that Recipient or the Recipient Group Companies and funds managed by any of the Recipient Group Companies. Each of the Shareholders and Directors consent to the transfer of relevant personal data to persons acting on behalf of the Recipient and to the offices of any Recipient both within and outside the European Economic Area for the purposes stated above, where it is necessary or desirable to do so.

## 26. SECRETARY

Subject to the provisions of the Act, the Directors may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.