

THE COMPANIES ACT 2006

COMPANY LIMITED BY SHARES

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Dated this 23 day of Oct 2018



JNI \*J7H9FILL\* #22  
24/10/2018  
COMPANIES HOUSE

ARTICLES OF ASSOCIATION

A & L Goodbody Northern Ireland  
6th Floor  
42-46 Fountain Street  
Belfast BT1 5EF

OF

KUDOS HOUSEWARES LIMITED (09140794)

(the Company)

Adopted by special resolution passed on 16th OCTOBER 2018

INTRODUCTION

1 INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Articles:

**Act:** means the Companies Act 2006.

**Affiliate:** means any holding company or subsidiary of that person and any subsidiary of any such holding company; and any other individual, company, body corporate, partnership or other entity which is controlled by or is related to that person.

**Appointor:** has the meaning given in article 12.1.

**Articles:** means the Company's articles of association for the time being in force.

**Board:** means the board of directors of the Company from time to time.

**Business:** means the business of the Company which is the manufacture and supply of kitchenware products and packaging.

**Business Day:** means any day other than a Saturday, Sunday or public holiday in England when banks in England are open for general business.

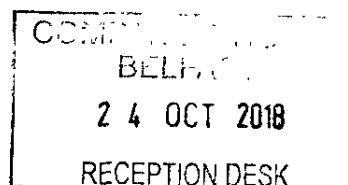
**Chairperson** means the chairperson of the board of directors of the Company from time to time.

**Civil Partner:** in relation to a shareholder, a civil partner as defined in the Civil Partnership Act 2004.

**Conflict:** has the meaning given in article 8.1.

**Connected Person:** means in relation to a person, any other person who, together with the first-mentioned person, constitute an Affiliate of the first-mentioned person.

**Eligible Director:** means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter).



**Model Articles:** means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles.

**Ordinary Share** means an ordinary share of £1.00 in the share capital of the Company having the rights and restrictions set out in these Articles (and the term **Ordinary Shares** shall be construed accordingly).

**Share** means an issued share in the capital of the Company of whatever class.

**Shareholders** means all those persons holding shares in the capital of the Company and who are parties to the Shareholders' Agreement.

**Shareholders' Agreement** means the shareholders' agreement entered into by (1) Martin Turner, (2) John Patrick Ward and (3) the Company on [●].

**Specified Drag Majority** means Shareholders who together hold in excess of 60% of the total issued Ordinary Shares from time to time.

**Specified Tag Majority** means Shareholders who together hold in excess of 50% of the total issued Ordinary Shares from time to time.

**Transfer Notice:** means the written notice provided to the Company by a shareholder indicating that he wishes to transfer his shares and giving details of the proposed transfer.

- 1.1 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.2 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.3 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.4 Unless expressly provided otherwise, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to writing or written includes electronic forms and the sending or supply of notices in electronic form.
- 1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.

- 1.9 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by, or are inconsistent with, these Articles.
- 1.10 Articles 8, 9, 11(2) and (3), 12(4), 13, 14(1), (2), (3) and (4), 17(2), 18(e), 26(5), 44(2), 52 and 53 of the Model Articles shall not apply to the Company.
- 1.11 Article 7 of the Model Articles shall be amended by:
- (a) the insertion of the words "for the time being" at the end of article 7(2)(a); and
  - (b) the insertion in article 7(2) of the words "(for so long as he remains the sole director)" after the words "and the director may".
- 1.12 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors) and the secretary (if any)" before the words "properly incur".
- 1.13 Article 27(3) of the Model Articles shall be amended by the insertion of the words ", subject to article 10," after the word "But".
- 1.14 Article 29 of the Model Articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2) of the Model Articles," after the words "the transmittee's name".

## **DIRECTORS**

### **2 DIRECTORS' MEETINGS**

- 2.1 Any decision of the directors must be taken at a meeting of directors in accordance with these Articles or must be a decision taken in accordance with article 3.
- 2.2 Subject as provided in these Articles, the directors may participate in directors' meetings for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. The directors will try to meet at least four times each year.
- 2.3 All decisions made at any meeting of the directors shall be made only by resolution, and no such resolution shall be passed unless more votes are cast for it than against it.
- 2.4 Unless otherwise agreed between the directors in writing, each Eligible Director has one vote at a meeting of directors.

### **3 UNANIMOUS DECISIONS OF DIRECTORS**

- 3.1 A decision of the directors is taken in accordance with this article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 3.2 Such a decision 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.
- 3.3 A decision may not be taken in accordance with this article if the Eligible Directors would not have formed a quorum at a directors' meeting to vote on the matter.

#### **4 CALLING A DIRECTORS' MEETING**

- 4.1 Any director may call a directors' meeting by giving not less than seven Business Days' notice of the meeting (or such lesser notice as all the Eligible Directors may agree) to the directors or by authorising the Company secretary (if any) to give such notice.
- 4.2 Notice of a directors' meeting shall be given to each director in writing, accompanied by:
- (a) an agenda specifying in reasonable detail the matters to be raised at the meeting; and
  - (b) copies of any papers to be discussed at the meeting.
- 4.3 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of directors unless all the directors present at the meeting agree.

#### **5 QUORUM FOR DIRECTORS' MEETINGS**

- 5.1 Subject to article 5.2, the quorum for the transaction of business at a meeting of directors is any two Eligible Directors (or their respective alternate director).
- 5.2 No business shall be conducted at any meeting of directors unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any business.
- 5.3 If a quorum is not present within 30 minutes of the time specified for a directors' meeting in the notice of the meeting then it shall be adjourned for two Business Days at the same time and place.
- 5.4 For the purposes of any meeting (or part of a meeting) held pursuant to article 8 to authorise a director's conflict, if there is only one Eligible Director in office other than the conflicted director(s), the quorum for such meeting (or part of a meeting) shall be one Eligible Director.
- 5.5 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision:
- (a) to appoint further directors; or
  - (b) to call a general meeting so as to enable the shareholders to appoint further directors.

#### **6 CASTING VOTE**

- 6.1 The post of chairman of the directors will be determined by the Board from time to time, the first such chairman shall be Martin Turner.
- 6.2 If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall not have a casting vote.
- 6.3 If the chairman for the time being is unable to attend any meeting of the board of directors, the shareholder who appointed him shall be entitled to appoint another director appointed by him to act as chairman at the meeting.

#### **7 TRANSACTIONS OR OTHER ARRANGEMENTS WITH THE COMPANY**

Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the

Companies Acts, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
- (b) shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such existing or proposed transaction or arrangement in which he is interested;
- (c) shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
- (d) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- (e) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- (f) shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

## **8 DIRECTORS' CONFLICTS OF INTEREST**

- 8.1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an Interested Director) breaching his duty under section 175 of the Act to avoid conflicts of interest (Conflict).
- 8.2 Any authorisation under this article 8 will be effective only if:
  - (a) to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles; and
  - (b) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other interested director's vote had not been counted.
- 8.3 Any authorisation of a Conflict under this article 8 may (whether at the time of giving the authorisation or subsequently):
  - (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;

- (b) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
- (c) provide that the Interested Director shall or shall not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
- (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
- (e) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
- (f) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.

8.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.

8.5 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.

8.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

## **9 RECORDS OF DECISIONS TO BE KEPT**

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in a form that enables the Company to retain a copy of such decisions.

## **10 NUMBER OF DIRECTORS**

The number of directors shall not be more than two without the prior written consent of Shareholders holding at least 75% of the total number of Ordinary Shares in issue of the Company, which must include Martin Turner and John Ward. The minimum number of directors shall not be less than one.

## **11 APPOINTMENT AND REMOVAL OF DIRECTORS**

11.1 For so long as MT holds Shares in the Company he shall be entitled to appoint one director and the first director appointed by MT shall be MT.

11.2 For so long as JW holds Shares in the Company he shall be entitled to appoint one director and the first director appointed by JW shall be JW.

- 11.3 Unless otherwise agreed by the Shareholders under the Shareholders' Agreement, Shareholders holding over 50% of the issued share capital may appoint a director.
- 11.4 Each Shareholder will consult with the others prior to any appointment or removal of a director.
- 11.5 A Shareholder removing a director shall indemnify and keep indemnified the Company against any claim connected with the director's removal from office.
- 11.6 If any director shall die or be removed from or vacate office for any cause, the shareholder who appointed him, shall appoint in his place another person to be a director.
- 11.7 In any case where, as a result of death or bankruptcy, the Company has no shareholders and no directors, the transmittee(s) of the last shareholder to have died or to have a bankruptcy order made against him (as the case may be) have the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person), who is willing to act and is permitted to do so, to be a director.

## **12 APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS**

- 12.1 Any director (Appointor) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to:

- (a) exercise that director's powers; and
- (b) carry out that director's responsibilities,

in relation to the taking of decisions by the directors, in the absence of the alternate's Appointor.

- 12.2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, after having consulted the other directors.

- 12.3 The notice must:

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the director giving the notice.

## **13 RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS**

- 13.1 An alternate director may not act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's Appointor.

- 13.2 Except as the Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their Appointors; and
- (d) are not deemed to be agents of or for their Appointors,

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his Appointor is a member.

**13.3 A person who is an alternate director but not a director:**

- (a) may be counted as participating for the purposes of determining whether a quorum is present at a meeting of directors (but only if that person's Appointor is an Eligible Director and is not participating); and
- (b) may participate in a unanimous decision of the directors (but only if his Appointor is an Eligible Director in relation to that decision, but does not himself participate).

**13.4 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.**

**14 TERMINATION OF ALTERNATE DIRECTORSHIP**

**14.1 An alternate director's appointment as an alternate terminates:**

- (a) when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or
- (b) on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or
- (c) on the death of the alternate's Appointor; or
- (d) when the alternate director's Appointor ceases to be a director for whatever reason.

**15 SECRETARY**

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

**SHARES**

**16 TRANSFER OF SHARES**

- 16.1** In these Articles, reference to the transfer of a share includes the transfer, assignment or other disposal 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.
- 16.2** Subject to article 16.3, the directors must register any duly stamped or certified exempt transfer made in accordance with these Articles and shall not have any discretion to register any transfer of shares which has not been made in compliance with these Articles, unless the other parties have consented in writing.



- 16.3 The directors may, as a condition to the registration of any transfer of shares in the Company require the transferee to execute and deliver to the Company a deed under which the transferee agrees to be bound by the terms of any shareholders' agreement (or similar document) in force between the shareholders in such 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). If any such condition is imposed in accordance with this article 16.3, the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.
- 16.4 On completion of a transfer of shares made in accordance with this article:
- (a) the party selling the shares shall deliver, or procure that there are delivered, to the Company the resignations of any directors appointed by the selling party, in each case acknowledging that they have no claims against the Company, to take effect at completion of the sale of the shares; and
  - (b) the parties shall procure that the Company shall repay any loans made to it by the party selling its shares (together with any interest accrued on such loans) and the parties shall use their best endeavours to procure that the party selling its shares is released from any guarantees, security arrangements and other obligations that it has given in respect of the Company and its Business.
- 16.5 The instrument of transfer of shares must be in the usual form prescribed from time to time or, if none is so prescribed, then in the form (if any) determined by the Directors. It will be executed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee.
- 16.6 Subject to articles 18 and 19 (as applicable), no transfer of any shares or any interest in any shares will be made by any member unless and until the following provisions are complied with in respect of such transfer (subject always to the provisions of any agreement between the shareholders of the Company and the Company from time to time).
- 16.7 For the purpose of ensuring that a particular transfer of shares or any interest in any shares is permitted under the provisions of these Articles, the directors may request the transferor or the person named as transferee in any transfer lodged for registration to provide the Company with such information and evidence as the directors may reasonably consider necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors within 21 days after such request they will be entitled to refuse to register the transfer in question.
- 16.8 Any member (or person entitled to shares by reason of the death or bankruptcy of any member) who wishes to transfer any shares or any interest in any shares (the **Seller**) will give to the Company a Transfer Notice. Subject as hereinafter mentioned, a Transfer Notice will constitute the Company as the Seller's agent and attorney for the sale of the shares (the **Sale Shares**) specified in the Transfer Notice at a price (the **Sale Price**) as may be agreed between the Seller and the directors or, in the absence of any agreement, at the price which the Company's auditors (acting as experts and not as arbitrators) will determine to be in their opinion the Fair Value (as defined in article 16.9) of the Sale Shares as at the date on which the Transfer Notice is given.
- 16.9 For the purposes of article 16.8 the "**Fair Value**" shall mean the value of the Sale Shares valued on the basis of:
- (a) a sale of the Sale Shares as between a willing seller and a willing buyer contracting on arm's length terms having regard to the fair value of the business of the Company and its subsidiaries (if any);

- (b) that the Company is a going concern and will continue to be so;
- (c) assuming that the Sale Shares are capable of transfer without restrictions; and
- (d) valuing the shares as a rateable proportion of all of the issued ordinary shares which value shall not be discounted or enhanced by reference to the number of shares held. The Fair Value as so determined by the Auditors or agreed between the Directors and the Seller will constitute the Sale Price.

- 16.10 If the Company's auditors are asked to determine the Sale Price they will use all reasonable endeavours to determine the Sale Price within 30 days of their appointment. The Company will, as soon as it receives the Company's auditors' written determination, notify the Seller and supply him with a copy of the written determination and the Seller will be entitled by notice in writing given to the Company within 14 days of the service upon him of the said copy, to withdraw the Transfer Notice. The Auditors' determination will be binding upon all parties. The cost of obtaining the written determination will be borne by the Seller if the Fair Value so determined is less than 95% of the Sale Price proposed by the Seller in the Transfer Notice. In the absence of fraud the Company's auditors will be under no liability to any person by reason of their determination or for anything done or omitted to be done by them for the purpose thereof or in connection therewith.
- 16.11 The Transfer Notice may contain a provision that, unless all the Sale Shares are sold pursuant to this article 16 none will be sold and any such provision will be binding on the Company.
- 16.12 Except where articles 16.10 or 16.11 are applicable, a Transfer Notice given or deemed given under this article 16 will be revocable only with the prior consent of the Directors, who may impose such conditions for any consent as they think fit, including a condition that the Seller bears all costs arising from the giving of such Transfer Notice and the revocation thereof.
- 16.13 Upon the Sale Price being agreed or determined as stated above, and provided the Seller does not give notice of revocation (if applicable,) the Company will immediately by notice in writing offer the Sale Shares on the following basis:
- (a) in the first instance, at the Sale Price to the Company at the absolute discretion of the Board for the purpose of effecting a purchase of own Shares by the Company (subject to and in accordance with the provisions of Part 18 of the Act); and
  - (b) in the event that the Board does not authorise a purchase of some or all of the Sale Shares by the Company within 28 days of the Sale Price being agreed or determined then immediately thereafter to all the other member or members holding shares (other than the Seller) the unsold Sale Shares at the Sale Price;
- (in the case of more than one person then pro rata to their existing holdings) giving details of the number and the Sale Price of such Sale Shares. Such offer will be open for a period of 28 days from the date of the notice (the First Acceptance Period). The Investors shall be entitled to nominate a purchaser for any Investor's Shares being transferred, which nominee may be a legal person or the Company (subject to and in accordance with the provisions of Part 18 of the Act).
- 16.14 If any of the Sale Shares remain unallocated after the First Acceptance Period and all applicants have been satisfied in full the Company will immediately give a further notice in writing to each of the members of the Company holding shares (other than the Seller and those members holding shares who have not applied for their entitlement or who have declined or are deemed to have declined) informing him or them of the number of Sale Shares remaining and the Sale Price and inviting each of them to state in writing within 14 days from the date of this further notice (the Second Acceptance

Period) whether the member is willing to purchase any, and if so what maximum number, of the Sale Shares remaining.

- 16.15 If within the Second Acceptance Period any member holding shares of that class applies for all or any of the Sale Shares, the Company will allocate such of the Sale Shares as are applied for to and amongst the applicants (and in case of competition, in proportion to their then existing holding of shares as nearly as may without involving fractions or increasing the number allocated to any applicant beyond that applied for by such applicant).
- 16.16 If within the First Acceptance Period or the Second Acceptance Period (if any) all or any of the other members (the **Transferees**) accept the offer of all or any of the Sale Shares the Directors will (subject to the provisions of article 16.11 if applicable) forthwith after the expiration of the First Acceptance Period or, (as the case may be), after the expiration of the Second Acceptance Period give notice in writing (the **Acceptance Notice**) of such acceptance to the Seller and the Transferees and will specify in the Acceptance Notice the place and time (being not earlier than 7 and not later than 14 days after the date of the Acceptance Notice) at which the sale of the Sale Shares (or such of the Sale Shares as are applied for) will be completed.
- 16.17 The Seller will be bound to transfer the Sale Shares (or (subject to the provisions of article 16.11 if applicable) such of the Sale Shares as are applied for) to the Transferees at the time and place specified in the Acceptance Notice and payment of the Sale Price for the Sale Shares (or such of the Sale Shares as are applied for) will be made by the Transferees to the Company as agent for the Seller. If the Seller fails to transfer the Sale Shares (or such of the Sale Shares as are applied for) the chairman of the Company or failing him the Company Secretary will be deemed to have been appointed attorney for the Seller with full power to execute, complete and deliver, in the name of and on behalf of the Seller, a transfer of the Sale Shares (or such of the Sale Shares as are applied for) to the Transferees against payment of the Sale Price. On payment to the Company of the Sale Price and of the relevant stamp duty payable in respect of the transfer to the Company the Transferees will be deemed to have obtained a good discharge for such payment and on execution and delivery of the transfer(s) the Transferees will be entitled to insist upon their respective names being entered in the register of members as the holders by transfer of, and to be issued with share certificates in respect of, the Sale Shares (or such of the Sale Shares as are applied for). After the names of the Transferees have been entered in the register of members in exercise of the above-mentioned powers the validity of the proceedings will not be questioned by any person.
- 16.18 The Company will be trustee for any moneys received as payment of the Sale Price from the Transferees and will promptly pay them to the Seller (subject to applying the same on his behalf in settling any fees or expenses falling to be borne by the Seller) together with any balance certificate to which he may be entitled.
- 16.19 If by the expiry of the last applicable Acceptance Period the offer for the Sale Shares at the Sale Price has not been accepted or is accepted in part only by the Transferees or if any of the Sale Shares allocated are not paid for by the proposed Transferees on the date for completion specified in the Acceptance Notice (the **Final Date**) then the shall in the period of 28 days from the Final Date either:
- (a) nominate a purchaser of such Sale Shares who is not already a member but whom they consider to be suitable for admission to membership of the Company and who will and does pay the Sale Price. The procedures set out in article 16.17 must be completed within 28 days of the date of any nomination by the Directors of any transfers of shares under this article 16.19(a) for this article to apply; or
  - (b) (if the Directors so resolve upon the written instruction of a majority in value of the Investors (in the case of a Seller (who is an Investor)) and or a 70% majority in value of

the ordinary Shareholders of the Company) serve a written notice on the Seller that the Company will (subject to and in accordance with the provisions of Part 18 of the Act) purchase all or any of the Sale Shares which are not the subject of acceptances or paid for, at the Sale Price and such notice will be binding upon the Company and the Seller who will respectively take all steps within their power to carry such purchase into effect. Such purchase by the Company must be completed within 28 days of the date of the written notice specified in this article 16.19(b) for this article to apply,

**PROVIDED ALWAYS** that if the Seller has included in the Transfer Notice a provision that unless all the Sale Shares are sold, none will be sold, then the notice under article 16.13 and this paragraph will refer to such a provision and will be construed accordingly, and completion of the transfers of the Sale Shares in accordance with article 16.8 and this paragraph will be conditional upon that provision being complied with in full.

- 16.20 Any direction (by way of renunciation, nomination or otherwise) by a member to the effect that such shares or any of them be transferred to another person will for the purposes of this article 16 be deemed to constitute service of a Transfer Notice and the provisions of this article 16 will apply accordingly.

## **17 DRAG ALONG**

- 17.1 If a Specified Drag Majority from time to time (the **Selling Shareholders**) wish to transfer their interest in all their Shares (the **Sellers' Shares**) to a bona fide arm's length purchaser (the **Third Party Purchaser**) the Selling Shareholders shall have the option (the **Drag Along Option**) to require all remaining Shareholders (the **Called Shareholders**) to sell and transfer all their Shares to the Third Party Purchaser (or as the Third Party Purchaser shall direct) in accordance with and subject to the remaining provisions of this article 18.
- 17.2 The Selling Shareholders may exercise the Drag Along Option by giving written notice to that effect (a Drag Along Notice) no later than 14 days before the transfer of the Sellers' Shares to the Third Party Purchaser. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Shares (the **Called Shares**) pursuant to this article 18, the person to whom they are to be transferred, the consideration for which the Called Shares are to be transferred (calculated in accordance with Clause 18.4) and the proposed date of transfer.
- 17.3 Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Third Party Purchaser within 90 days after the date of service of the Drag Along Notice. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 17.4 The Called Shareholders shall be obliged to sell each of the Called Shares at the same price per share and on the same terms and conditions of sale as attributed by the offer from the Third Party Purchaser to the Sellers' Shares.
- 17.5 Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Sellers' Shares unless:
- (a) all of the Called Shareholders and the Selling Shareholders agree otherwise; or
  - (b) that date is less than three days after the Drag Along Notice where it shall be deferred until the third day after the Drag Along Notice.
- 17.6 For the avoidance of doubt any rights of pre-emption or transfer restrictions set out in this Agreement and/or the Articles shall not apply on any transfer of Shares to a Third Party Purchaser (or as it may

direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served in accordance with this Clause 18.

- 17.7 If any Shareholder does not on completion of the sale of Called Shares execute transfer(s) in respect of all the Called Shares held by him such defaulting holder shall be deemed to have irrevocably appointed the Chairperson of the Company (or failing him the secretary of the Company) nominated for the purpose by the Selling Shareholders to be his agent and attorney to execute all necessary transfer(s) on his behalf and against receipt by the Company (on trust for such holder) of the purchase monies or any other consideration payable for the Called Shares deliver such transfer(s) to the Third Party Purchaser (or as he may direct) and the directors shall forthwith register the Third Party Purchaser (or as he may direct) as the holder thereof and, after the Third Party Purchaser (or his nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. It shall be no impediment to registration of shares under this article 18.7 that no share certificate has been produced.
- 17.8 Upon any person, following the issue of a Drag Along Notice, becoming a Shareholder (other than for the avoidance of doubt the Third Party Purchaser) (a New Member), a Drag Along Notice shall be deemed to have been served upon the New Member on the same terms as the previous Drag Along Notice who shall thereupon be bound to sell and transfer all such Shares acquired by him to the Third Party Purchaser (or as the Third Party Purchaser may direct) and the provisions of this article 18 shall apply mutatis mutandis to the New Member save that completion of the sale of such Shares shall take place within three days upon the Drag Along Notice being deemed served on the New Member.

## **18 TAG ALONG**

- 18.1 If a Specified Tag Majority proposes to make any transfer to a third party (or third parties) who is (are) not already a Shareholder (except in the case of a Permitted Transfer as defined in the Articles) of any Shares (the relevant Specified Tag Majority Shareholder(s) for the purpose of this article 19 being together the Transferor) then the following procedure shall first be implemented:
- (a) the Transferor shall notify the remaining Shareholders (the Remaining Shareholders) in writing (the Tag Along Notice) of the number of Shares proposed to be transferred together with the price and the terms and conditions upon which the Transferor is proposing to transfer such Shares;
  - (b) within 14 days of the date of the Tag Along Notice, each Remaining Shareholder shall be entitled to notify the Transferor if they elect to transfer an Equivalent Percentage (as defined in article 19.1(d) below) of their Shares (the Tag Shares). If any of the Remaining Shareholders fail to notify the Transferor within such 14 day period they shall be deemed to have waived their rights under this article 19 in respect of such transfer;
  - (c) if the Remaining Shareholders elect to transfer all of their Tag Shares the Transferor shall not be entitled to transfer his/her Shares referred to in article 19 above unless the Transferor procures that those Shareholders who have elected to transfer their Tag Shares have the right to sell all of their Tag Shares to the relevant third party (or third parties) at the same price and on the same terms and conditions as those applicable to the Transferor (and save that the provisions of this article 19 will not oblige the Investors or INI to give any warranties or indemnities to such Third Party Purchaser other than warranties in respect of the title to their respective shares); and
  - (d) for the purposes of this article 19 an Equivalent Percentage shall mean a percentage calculated as follows:

a

b x c

where

"a" is the number of Shares proposed to be sold by the Transferors;

"b" is the total number of Shares held by the Transferors;

"c" is 100

## 19 ISSUE OF FURTHER SHARES

The parties shall procure that the Company shall not issue any shares or other equity securities (within the meaning of section 560(1) of the Act) to any person, unless that person is already a party to, or agrees to execute and deliver to the Company, a deed under which that person agrees to be bound by the terms of any shareholders' agreement (or similar document) in force between the shareholders, in such form as the directors may reasonably require (but not so as to oblige that person to have any obligations or liabilities greater than those of the existing parties under any such agreement or other document).

## DECISION MAKING BY SHAREHOLDERS

### 20 POLL VOTES

- 20.1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 20.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

### 21 PROXIES

- 21.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".
- 21.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid, unless the directors, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that article.

## ADMINISTRATIVE ARRANGEMENTS

### 22 MEANS OF COMMUNICATION TO BE USED

- 22.1 Any notice, document or other information given to a party under or in connection with these Articles:
- (a) shall be in writing and in English;
  - (b) shall be signed by or on behalf of the party giving it;

(c) shall be sent to the relevant party for the attention of the contact and to the address or email account specified between the parties; and

(d) shall be:

(i) delivered by hand; or

(ii) sent by pre-paid first class post, recorded delivery or special delivery; or

(iii) sent by e-mail to an e-mail address notified by the relevant party to the other party for such purpose; and

(e) is deemed received as set out in article 22.2.

22.2 Subject to article 22.3, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or

(b) if sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or

(c) if sent or supplied by e-mail, one hour after the notice, document or information was sent or supplied; and

(d) if deemed receipt under the previous paragraphs of this article 22.1 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this article, all references to time are to local time in the place of deemed receipt.

22.3 To prove service, it is sufficient to prove that:

(a) if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address; or

(b) if sent by post the envelope containing the notice was properly addressed, paid for and posted; or

(c) if sent by e-mail, the notice was properly addressed and sent to the e-mail address of the recipient.

22.4 This article does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 23 INDEMNITY

23.1 Subject to article 23.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

(a) each relevant officer of the Company shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

- (i) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
- (ii) in relation to the Company's activities as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's affairs; and

- (b) the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 21.1(a) and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

23.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

23.3 In this article a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act) , but excluding in each case any person engaged by the Company as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

## **24 INSURANCE**

24.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

24.2 In this article:

- (a) a "relevant officer" means any director or other officer or former director or other officer of the Company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the Company as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor); and
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company or any pension fund or employees' share scheme of the Company.