

THE COMPANIES ACTS 1948 to 198

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

**JAMES JOHNSTON & CO. OF ELGIN LIMITED**  
(incorporating all amendments made up to 30<sup>th</sup> April 1999)

**PRELIMINARY**

1. None of the Regulations contained in Table A in the First Schedule to the Companies Act, 1929, or as altered on pursuance of any subsequent Act, shall apply to the Company and are hereby expressly excluded.
2. The Regulations contained in and applied by Part II of Table A in the First Schedule of the Companies Act, 1948, as amended by the Companies Act, 1967 (hereinafter referred to as "Table A"), in so far as not excluded, altered or modified by or inconsistent with the following Articles, shall apply to the Company and be deemed to be incorporated herein.
3. Regulations 7, 11, 24, 53, 75, 77, 84(2), 84(4), 87, 88(a), 88(f), and 89 of Part I of Table A and Regulation 3 of Part II of Table A shall not apply to the Company and are hereby expressly excluded. The following Regulations of Part I of Table A shall be modified:-

Regulation 15 so that the words "provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for payment of the last preceding call" shall be held to be delete.

Regulation 22 so that the words "(except in the case of fully paid shares) by or on behalf of the" shall be inserted immediately before the word "transferee" where it first appears in this Regulation.

Regulation 32 so that the proviso thereto shall be held to be delete.

Regulation 33 so that there shall be added at the end thereof the words "and all expenses that may have been incurred by the Company by reason of such non-payment".

Regulation 45 paragraph (b) so that there shall be added at the end of the paragraph - "and so that the resolution whereby any share is sub-divided may determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred or other special rights over, or may have such deferred rights or be subject to any such restrictions, as compared with the others, as the Company has power to attach to unissued or new shares."

Regulation 52 so that the words "the fixing of the remuneration of the Directors" shall be inserted immediately after the word "retiring".



Regulation 58 so that in paragraph (b) the words "one member" shall be substituted for the words "three members" and so that the word "or" at the end of paragraph (b) and the whole of the paragraphs (c) and (d) shall be held to be delete.

Regulation 76 so that the words "and shall be divided amongst them as they shall agree and failing agreement equally" shall be inserted after the word "meeting" at the end of the first sentence.

Regulation 79 so that the proviso thereto shall be held to be delete.

Regulation 86 so that the words "and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose" shall be held to be delete.

Unless otherwise required by the context of these Articles and Table A, in so far as not excluded and as modified in terms of this Article, words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine.

## **BUSINESS**

4. Any branch or kind of business which, by the Memorandum of Association of the Company or these Articles, is either expressly or by implication authorised to be undertaken by the Company may be undertaken by the Directors at such time as they shall think fit, and further may be suffered by them to be in abeyance, whether such branch or kind of business may have been actually commenced or not, so long as the Directors may deem it expedient not to commence or proceed with such branch or kind of business.

## **SHARES**

5. Subject to Article 6 hereof, the shares shall be under the control of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and upon such terms and conditions as the Directors may determine but so that no share shall be issued at a discount except in accordance with Section 57 of the Companies Acts, 1948.
6. Unless otherwise determined from time to time by the Company in General Meeting any unissued shares in the capital for the time being of the Company shall be offered in the first instance to all Members for the time being of the Company in proportion to the nominal amounts of the shares in the capital of the Company held by them respectively. Such offer shall be made by notice specifying the number of shares for which such Members respectively are entitled to subscribe and limiting the time within which the offer, if not accepted, shall be deemed to be declined and, after the expiration of such time or on receipt of an intimation from any Member to whom such notice may have been given that he declines to accept the shares offered, the Directors may dispose of such shares as they may think fit. The Directors may likewise dispose of any unissued shares which, by reason of the proportion borne by them to the number of persons entitled to such offer as aforesaid, or any reason of any other difficulty in apportioning the same, cannot in the opinion of the Directors be conveniently offered under this Article; provided that they will not be entitled without the consent of a Special Resolution of the Company to dispose of such unaccepted and unoffered shares in such a manner so as (1) to increase the holding of any Member who at that time is the registered holder of shares of the Company giving

more than thirty per cent of the total voting rights attached to the issued shares of the Company or (2) to result in any person to whom any of such shares shall be issued becoming the registered holder of shares of the Company giving more than thirty per cent of the total voting rights attached to the issued shares of the Company as existing after the completion of the provisions of this Article or (3) to increase the aggregate holding of all employees of the Company (other than Directors) to more than eight per cent of the total voting rights attached to the issued shares of the Company as existing after the completion of the provisions of this Article. Pursuant to Section 91(1) of the Companies Act 1985, the application to the Company of Sections 89(1) and 90(1) to (6) inclusive shall be excluded.

- 7A The Company shall not be bound to recognise but shall be entitled to recognise in such manner and to such extent as it may think fit any trusts in respect of any of the shares of the Company. Notwithstanding any such recognition the Company shall not be bound to see to the execution, administration or observance of any trust, whether expressed, implied or constructive, in respect of any shares of the Company and shall be entitled to recognise and give effect to the acts and deeds of the registered holders of such shares as if they were the absolute owners thereof. For the purpose of this Article "trust" includes any right in respect of any shares of the Company other than an absolute right thereto in the registered holder thereof for the time being or such other rights in the case of transmission thereof as are mentioned in Part I of Table A.
- 7B The Directors shall not be entitled to decline to register the Executors, Administrators or Trustees of a deceased Member as holders of the shares held by such deceased Member and Regulations 30 and 31 of Part I of Table A shall be modified accordingly.

### **TRANSFER OF SHARES**

8. Subject to the approval of sanction of the Directors and to the provisions of Articles 10 and 11 hereof any Member may transfer all or any of his shares of the Company to another Member to the wife, husband or child or any other lineal descendant or brother or sister of the transferring Member or to an employee of the Company or to Trustees for the wife, husband or any child or other lineal descendant or brother or sister of the transferring Member and such Trustees may transfer all or any of the shares held by them to the wife, husband or any child or other lineal descendant or brother or sister of the settlor who are entitled thereto in terms of the Deed of Trust and the Executors, Administrators or Trustees of a deceased Member may transfer all or any of the shares held by such deceased Member to the widow or widower of such deceased Member or to any of the foregoing relatives of the deceased Member provided that if the Directors in their absolute discretion and without assigning any reason therefor refuse to register any such transfer of shares, the transferring Member or the Executors, Administrators or Trustees of a deceased Member as the case may be shall be entitled, but not obliged, to offer the shares covered by such transfer or any of them in the manner provided in Article 9 hereof.
9. Subject and without prejudice to the provisions of Articles 8 and 11 hereof:-
- (a) If any Member or other person entitled be desirous of selling or transferring all or any of his shares in the capital of the Company he (hereinafter called "the Proposing Transferor") shall give notice in writing (hereinafter called a "Transfer Notice") to the Company stating the number of shares to be sold or transferred. Such Notice shall constitute the Directors his Agents for the sale of such shares to any person or persons including themselves or any of them

at their fair value as at the date of receipt of the Transfer Notice as shall be agreed between the Proposing Transferor and the Directors or, failing agreement within a period of 21 days after the date of receipt of the Transfer Notice, as shall be fixed by the Auditor for the time being of the Company acting as an expert and not as an arbiter and the Certificate of the Auditor as to the fair value shall be final and binding on all parties. A Transfer Notice shall not be revocable except with the sanction of the Directors.

- (b) With a view to finding a purchaser for the shares comprised in a Transfer Notice the Directors shall offer such shares at the fair value as agreed or fixed as aforesaid to the persons then holding the remaining shares in the capital of the Company as nearly as may be in proportion to their respective holdings of shares in the capital of the Company and shall limit the time within which such offer if not accepted in whole or in part shall be deemed to be declined, and shall notify such persons that any such person who desires to purchase shares in excess of his said proportion shall in his reply state how many additional shares he desires to purchase at the fair value as agreed or fixed as aforesaid, and if all such persons do not accept their said proportions in full the unaccepted shares shall be used for satisfying the said claims for additional shares. If there shall be insufficient of the said unaccepted shares to satisfy in full all such claims for additional shares the said unaccepted shares shall be distributed amongst the persons making such claims as nearly as may be in proportion to their said respective holdings of shares in the capital of the Company, provided that no person shall be bound to take more additional shares than those he shall have offered to purchase. The Directors shall make such arrangements as regards the finding of a purchaser for any shares not accepted or claimed as aforesaid within the time so limited as they shall think just and reasonable.
- (c) If the Directors within the space of three calendar months after receipt of a Transfer Notice find any person or persons as aforesaid willing to purchase the shares comprised in such Transfer Notice or any of them and give notice in writing thereof to the Proposing Transferor he shall be bound, upon payment of the fair value as agreed or fixed as aforesaid, to transfer such shares to the purchaser or purchasers thereof who shall be bound to complete the purchase within fourteen days from the service of such last mentioned notice.
- (d) If in any case the Proposing Transferor, after having become bound as aforesaid, makes default in transferring any shares to a purchaser thereof, the Directors shall be entitled to receive the purchase money, to cause a transfer to be executed for and on behalf of the Proposing Transferor, to cause the name of the purchaser to be entered in the Register of Members as the holder of the shares, and to hold the purchase money in trust for the Proposing Transferor. The receipt of the Directors for the purchase money shall be a good discharge to the purchaser and after the purchaser's name has been entered in the Register of Members in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person.
- (e) If the Directors shall not within the space of three calendar months after receipt of a Transfer Notice find a purchaser or purchasers for all the shares comprised in such Transfer Notice or shall fail for any reason to give notice to the proposing Transferor in terms of paragraph (c) hereof or if a purchaser shall fail to complete his purchase within the time limit laid down in the said paragraph, the Proposing Transferor shall at any time within three calendar

months thereafter be entitled to dispose of the shares or those not purchased as the case may be (provided that in the case of a sale the price bona fide paid for the shares shall not be less than the fair value as agreed or fixed as aforesaid). Upon such a sale or transfer being effected the transferee shall be entitled to present the transfer in his favour and, subject as hereinafter provided have himself registered as a Member accordingly; provided always that the Directors in their absolute discretion shall be entitled to refuse to register any such transfer without assigning any reason for such refusal.

10. If any member who is an employee or director of the Company (an "Employee Member") shall cease for any reason to be an employee or director of the Company the Directors shall be entitled by notice in writing served within six months of such cessation to require (1) such Employee Member or his executors, administrators or trustees as the case may be to offer for sale the whole of the shares held by such Employee Member and (2) the spouse of the Employee Member to offer for sale the whole of the shares held by such spouse and on such notice being duly served such Employee Member (or his executors, administrators or trustees as the case may be) and/or the spouse of the Employee Member shall be deemed to be desirous of selling or transferring such shares in accordance with the provisions of Article 9 hereof and all such provisions shall thereupon apply. Similarly, if any Member shall become bankrupt the Directors shall be entitled by notice in writing served within six months of such bankruptcy to require such Member's trustee in bankruptcy to offer for sale the whole of the shares held by such Member and on such notice being duly served such trustee in bankruptcy shall be deemed to be desirous of selling or transferring such shares in accordance with the foregoing provisions of Article 9 hereof and all such provisions shall thereupon apply. The provisions of Article 8 shall not apply to any transfer of shares made pursuant to this Article.
11. Notwithstanding any of the provisions of Articles 8, 9 and 10 hereof no sale or transfer of shares which would result in the proposed transferee becoming the registered holder of shares of the Company giving the right to more than thirty per cent of the total voting rights for the time being attached to the issued shares of the Company shall be approved by the Directors without the prior consent of a Special Resolution of the Company and a similar consent shall be required in any case where a sale or transfer would increase the holding of any proposed transferee who at that time is already the registered holder of shares of the Company giving the right to more than thirty per cent of the total voting rights as aforesaid. Also no sale or transfer of shares which would result in the total number of shares held by employees of the Company (other than Directors) exceeding eight per cent of the total voting rights as aforesaid shall be approved by the Directors without the prior consent of a Special Resolution of the Company.

#### **PURCHASE OF SHARES**

- 11A Subject to the provisions of the Companies Act 1985, the Company may purchase its own shares (including any redeemable shares) and make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares.

#### **LIEN**

12. The Company shall have a first and paramount lien and charge on all the shares (whether fully paid up or not) registered in the name of any Member (whether solely or jointly with others) and on all dividends payable thereon for all moneys due to the Company from him or his estate either alone or jointly with any other person whether

a Member or not, and whether such moneys are presently payable or not but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article.

## **DIRECTORS**

13. The number of Directors shall not be less than two.
14. It shall not be necessary for a Director to hold any shares in the Company to qualify him to act as such Director. A Director who is not a Member of the Company shall not be entitled to vote at General Meetings of the Company but shall be entitled to receive notice of all such Meetings and to attend and speak at the same and Regulation 134 of Part I of Table A is modified accordingly.
15. At every Annual General Meeting of the Company one-third of the Directors for the time being, or if their number is not three or a multiple of three then the number nearest to but not exceeding one-third, shall retire from office.
16. A Director shall be entitled to vote in respect of any contract or arrangement in which he is interested and shall be taken into account in reckoning the quorum present at the meeting when such contract or arrangement is under consideration.
17. Any Director appointed to any executive office (including the office of Executive Chairman) or who devotes special attention to the Company or who otherwise performs services which in the opinion of the Directors are outwith the scope of the ordinary duties of a Director may be paid such extra remuneration by way of salary, commission, participation in profits or otherwise as the Board of Directors may determine.

## **MANAGING AND EXECUTIVE DIRECTORS**

18. The Directors may from time to time appoint one or more of their body to be holder of any executive office, including the office of Executive Chairman or Managing or Joint Managing Director, on such terms and for such period as they may determine.
19. A Managing or Joint Managing Director shall not, while he continues to hold that office, be subject to retirement by rotation and he shall not be taken into account in determining the rotation of retirement of Directors or the number of Directors to retire but he shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 20A The appointment of any Director to the office of Executive Chairman or Managing or Joint Managing Director shall be subject to termination if he ceases from any cause to be a Director but without prejudice to any claim for damages for breach of any contract of service between him and the Company.
- 20B The appointment of any Director to any other executive office shall not be subject to termination if he cease from any cause to be a Director, unless the contract or resolution under which he holds office shall expressly state otherwise in which event the termination of his office if he cease from any cause to be a Director shall be without prejudice to any claim for damages for breach of any contract of service between him and the Company.
- 21 The Directors may entrust to and confer upon a Director holding any executive office any of the powers exercisable by them as Directors upon such terms and conditions

and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

### **ALTERNATE DIRECTORS**

- 22A Each Director shall have the power to appoint another Director to be his alternate Director and may at his discretion remove such alternate Director. Any appointment or removal of an alternate Director shall be effected by notice in writing signed by the appointer and delivered to the Registered Office of the Company or tendered to a meeting of the Directors. An alternate Director shall, if his appointer so requests, be entitled to receive notices of meetings of the Board or of a committee of the Directors to the same extent as the appointer and shall be entitled to attend any such meeting and to exercise and discharge all the functions, powers and duties of his appointer other than the power to appoint an alternate or to receive remuneration.
- 22B Every person acting as an alternate Director shall have one vote for each Director for whom he acts as alternate, in addition to his own vote as a Director. If his appointer is temporarily unable to act through ill-health or disability or otherwise unavailable, the signature of an alternate Director to any resolution in writing of the Directors or a committee of the Directors shall be as effective as the signature of his appointer.
- 22C An alternate Director shall ipso facto cease to be an alternate Director if his appointer ceases for any reason to be a Director provided that, if at any meeting any Director retires by rotation or otherwise but is re-elected at the same meeting, any appointment made by him pursuant to this Article which was in force immediately before his retirement shall remain in force as though he had not retired.

### **POWERS OF DIRECTORS**

- 23 Without restricting the generality of their powers the Directors may give or award pensions, annuities, gratuities and superannuation or other allowances or benefits to any persons who are or have at any time been Directors of or employed by or in the service of the Company or of any company which is the holding company of, or a subsidiary company of or allied or associated with the Company or any such holding company or subsidiary company and to the wives, widows, children and other relatives and dependants of any such persons and may set up, establish, support and maintain pension, superannuation and other funds or schemes (whether contributory or non-contributory) and make payments towards insurance or other payments (either in connection with any such fund or scheme or otherwise) for the benefit of such persons entitled to receive and retain for his own benefit any such pension, annuity, gratuity, allowance or other benefit (whether under any such fund or scheme or otherwise).

### **SPECIAL DIRECTORS**

- 23A (a) The Directors may from time to time appoint any manager or other officer or person in the employment of the Company or of any subsidiary company of the Company to be a Special Director of the Company and may from time to time remove from office any person so appointed.
- (b) Unless otherwise determined by the Company by Ordinary Resolution the number of Special Directors shall not exceed ten.
- (c) A Special Director shall not be and shall not be entitled to act as a Director of

the Company and may be appointed on such terms and conditions and with such powers and subject to such restrictions and limitations as the Directors shall think fit.

- (d) In this appointment of the Special Director as aforesaid the Directors may specify the title to be used by such Special Director (not being the title "Director" without any qualification) and, in particular but without prejudice to the generality of this power the title to be used by a Special Director may have reference to the nature of his duties, the department or division of the business of the Company or of any subsidiary of the Company in which he is employed or the place, area or district in or for which he is stationed or responsible as the case may be.
- (e) Save as otherwise agreed between him and the Company the appointment of any person to be a Special Director shall not affect the terms and conditions of his employment by the Company, or by a subsidiary company of the Company, whether as regards his duties, remuneration or otherwise.
- (f) The office of a Special Director shall be vacated:-
  - (1) if he becomes bankrupt, or is insolvent, or makes any arrangement or composition with his creditors;
  - (2) if he becomes of unsound mind;
  - (3) if he ceases to be in the employment of the Company or a subsidiary company of the Company in some capacity other than that of a Special Director;
  - (4) if he be removed by a resolution of the Directors; or
  - (5) if he resigns his office as a Special Director by notice in writing to the Company.
- (g) The appointment, continuance in office, removal, powers, duties and remuneration of the Special Directors shall be determined by the Directors.
- (h) The Special Directors shall not be taken into account in calculating the quorum at any meeting of the Directors at which any Special Directors may be present, and the Special Directors shall not, except with and to the extent of the sanction of the Directors:-
  - (1) have any rights of access to the books of the Company;
  - (2) be entitled to receive notice of, or to attend or vote at, meetings of the Directors;
  - (3) be entitled to participate in any other respect in the exercise of any of the collective powers or duties of the Directors, or to exercise any of the individual powers or rights of a Director under these Articles (including this Article), provided that no act shall be done by the Directors, which would impose any personal liability on any Special Director whether under any statutory provision or otherwise except with his knowledge.



## **SECRECY**

- 24 No Member, or General or other Meeting of Members, shall be entitled to require discovery of or any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process, or which may relate to the conduct of the business of the Company, and which in the opinion of the Directors it would be inexpedient in the interest of the Company to communicate to the public.