

34389

THE COMPANIES ACT 1985
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION

of

MARSHALL FOOD GROUP LIMITED

(Adopted by a Special Resolution passed on 15th January 1998 and amended by
Written Special Resolution of the Company's Sole Member dated 29th January, 1999)

PRELIMINARY

1. The Regulations contained in Table A to the Schedule to the Companies (Tables A - F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (which Table is hereinafter referred to as "Table A") shall, save insofar as they are excluded by or inconsistent with the following provisions, apply to the Company.
2. Regulations 24, 46, 64 and 73, 74, 75, 76, 77, 94, 95, 96 and 97 of Table A shall not apply to the Company.

PRIVATE COMPANY

3. The Company is a private company and accordingly no invitation shall be made to the public to subscribe for any shares or Debentures of the Company.

SHARE CAPITAL

4. The share capital of the Company at the date of the adoption of these Articles is £16,000,000 divided into 3,812,823 Ordinary Shares of £1 each (in these Articles referred to as "Ordinary Shares"), 2,187,177 A Ordinary Shares of £1 each (in these Articles referred to as "A Ordinary Shares") and 10,000,000 Preferred Redeemable Shares of £1 each (in these Articles referred to as "Preference Shares"). Subject to clause A and B of this Article 4 the Ordinary Shares and the A Ordinary Shares shall rank *pari passu* in all respects.

A. As Regards Income

- (i) The profits of the Company available for distribution shall be applied first in paying to the holders of the Preference Shares a fixed cumulative preferential net cash dividend (hereinafter in these articles referred to as "the Preference Dividend") of 6 pence per annum on each share accruing from the date of subscription for the Preference Shares and payable half yearly on 30 June and 31 December the first such payment to be made on



30 June 1999 and secondly in paying the holders of the Ordinary Shares and the A Ordinary Shares a net cash dividend provided that no dividend shall be declared or paid to the holders of Ordinary Shares and the A Ordinary Shares unless and until the Preference Dividend has been paid in full in respect of that financial year and in respect of all previous financial years of the Company and all Preference Shares which have fallen due for redemption have been redeemed.

- (ii) Every dividend shall be distributed to the appropriate shareholders pro-rata according to the amounts paid up or credited as paid up on the shares held by them respectively and shall accrue on a daily basis.
- (iii) Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the Act the Preference Dividend shall (notwithstanding regulations 102 to 108 inclusive contained in Table A or any other provision of these Articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any other dividend.
- (iv) The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time and to the extent that it may lawfully do so declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of any redemption money due on the Preference Shares and the Preference Dividend.

B. As Regards Voting

At any General Meeting of the Company on a show of hands every Member of the Company who is present in person or by proxy (or being a corporation) by representative and entitled to vote shall have one vote and on a poll every Member who is present in person or by proxy (or being a corporation) by representative and entitled to vote shall have one vote for each share held by him PROVIDED THAT the A Ordinary Shares and the Preference Shares shall entitle the holders thereof to receive notice of and attend any General Meeting of the Company but shall not entitle the holders thereof to vote at any General Meeting of the Company.

C As Regards Capital

On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall be applied as follows:-

- (i) first in paying to the holders of the Preference Shares £1 per share together with a sum equal to any arrears or accruals of the Preference Dividend calculated down to the date of the return of capital;

- (ii) the balance of such assets shall be distributed amongst the holders of the Ordinary Shares and A Ordinary Shares (pari passu as if the same constituted one class of shares) in proportion to the amounts paid up or credited as paid up on the Ordinary Shares and A Ordinary Shares held by them respectively.

D As Regards Redemption of Preference Shares

Subject to the provisions of the Act the Preference Shares shall be redeemed in the proportions and on the dates set out below:-

<u>Redemption Date</u>	<u>Number of Shares Redeemable</u>
30 June 2001	2,000,000
30 June 2002	2,000,000
30 June 2003	2,000,000
30 June 2004	Balance

and any Preference Shares not redeemed upon the due date shall be redeemed forthwith upon redemption becoming permissible under the Act.

The Company may redeem all or (in instalments of not less than 25,000 shares) some of the Preference Shares in advance of the due date for redemption and in the absence of any contrary agreement between such holder and the Company any partial early redemption shall be deemed to relate to the shares falling due for redemption in inverse order of maturity.

On the dates fixed for any redemption the Company shall pay to each registered holder of Preference Shares the amount payable in respect of such redemption and upon receipt of that amount each such holder shall surrender to the Company the certificate for his shares which are to be redeemed in order that they may be cancelled provided that if any certificate so surrendered includes any shares not redeemable at that time the Company shall issue a fresh certificate for the balance of the shares not redeemable to the holder.

The Company shall pay on each of the Preference Shares so redeemed the sum of £1 and shall contemporaneously pay any arrears or accruals of the Preference Dividend calculated to the date of redemption and in the absence of any direction to the contrary by the holder of the relevant Preference Shares any moneys paid on redemption of such shares shall relate first to the said arrears and accruals of Preference Dividend. The Preference Dividend shall cease to accrue from the date of payment of the redemption moneys.

CLASS RIGHTS

5. Whenever the share capital of the Company is divided into different *classes* of Shares, the rights attached to any class of share may 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 holder or holders of three-fourths of the issued shares of that class, or with the sanction of an Extraordinary Resolution passed at a separate meeting of the holders of the shares of that class but not otherwise. To every such meeting all the provisions of these Articles relating to General Meetings of the Company or to the proceedings thereat shall *mutatis mutandis* apply except that the necessary quorum shall be two persons at least holding or representing by proxy one third in nominal amount of the issued shares of the class and that the holders of shares of the class present in person or by proxy have one vote in respect of every share of the class held by them respectively.

ALLOTMENT OF SHARES

6. All unissued shares forming part of the share capital of the Company on the date of the adoption of these Regulations as the Articles of Association of the Company shall be at the disposal of the Directors, and the Directors are authorised by this regulation to allot, issue, grant options over, or otherwise deal with or dispose of the same to such persons and at such times and on such terms and conditions as they think proper, but the authority given to the Directors in this Regulation shall terminate on the date five years from the date of the adoption of these Regulations as the Articles of Association of the Company and thereafter no shares shall be issued by the Directors (other than in pursuance of an offer or agreement made by the Company before the expiry of the foresaid authority) unless the Directors are, in accordance with section 80 of the Companies Act 1985, authorised to do so in General Meeting.

FURTHER ISSUE OF SHARES

7. The Company shall before the issue of any new shares which would on issue form part of the Company's equity share capital (other than any shares to be issued pursuant to an option agreement between the Company and Uberior Trading Limited dated on or about the date of adoption of these Articles), offer for subscription to each holder of shares in the equity share capital of the Company such proportion of such new shares as the aggregate nominal value of the equity share capital of the Company held by that holder bears to the aggregate nominal value of the total equity share capital of the Company immediately prior to the issue of such new shares. Any offer made by the Company pursuant to this Regulation shall be made upon the same terms and conditions as to payment and otherwise as the issue of the remainder of such new shares.

LIEN

8. The lien conferred by Regulation 8 in Table A shall attach also to fully paid up shares and the Company shall also have a first and paramount lien on all shares, whether fully paid-up or not, standing registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all

monies presently payable by him or his estate to the Company. Regulation 8 of Table A shall be modified accordingly.

TRANSFER OF SHARES

9. (a) The Directors may in their absolute discretion and without assigning any reason therefor, decline to register the transfer of a share not made in accordance with the remaining provisions of this Article 9, whether or not it is a fully paid share and Regulation 24 of Table A shall not apply to the Company.
- (b) Any person (other than Uberior Trading Limited or any company which is its holding company or subsidiary or is a subsidiary of its holding company) (hereinafter called "the proposing transferor") proposing to transfer any shares shall give notice in writing (hereinafter called "the transfer notice") to the Company that he desires to transfer the same and specifying the price per share at which they are to be transferred. The transfer notice shall constitute the Company the agent of the proposing transferor for the sale of all (but not some only the shares comprised in the transfer notice to any Member or Members willing to purchase the same (hereinafter called "the purchasing Member") at the price specified therein or at the fair value certified in accordance with paragraph (d) below (whichever shall be the lower). A transfer notice shall not be revocable except with the sanction of the Directors. For the avoidance of doubt, the only provisions of these Articles relating to transfers of shares by Uberior Trading Limited or any company which is its holding company or subsidiary or is a subsidiary of its holding company shall be those provisions contained in article 9(h).
- (c) The shares comprised in any transfer notice shall be offered for sale to the Members (other than the proposing transferor) as nearly as may be in proportion to the number of shares held by them respectively. Such offer shall be made by notice in writing (hereinafter called "the offer notice") within seven days after the receipt by the Company of the transfer notice. The offer notice shall state the price per share specified in the transfer notice and shall limit the time in which the offer may be accepted, not being less than twenty one days nor more than forty two days after the date of the offer notice, provided that if a certificate of fair value is requested under paragraph (d) below, the offer shall remain open for acceptance for a period of fourteen days after the date on which notice of the fair value certified in accordance with that paragraph shall have been given by the Company to the Members or until the expiry of the period specified in the offer notice, whichever is the later. For the purpose of this Article, an offer shall be deemed to be accepted on the date on which the acceptance is received by the Company. The offer notice shall further invite each Member to state in his reply the number of additional shares (if any) in excess of his proportion which he desires to purchase and if all the Members do not agree the offer in respect of their respective proportions in full, the shares not so accepted shall be used to satisfy the claims for additional shares as nearly as may be in proportion to the number of shares

already held by them respectively, provided that no Member shall be obliged to take more shares than he shall have applied for. If any shares shall not be capable without fractions of being offered to the Members in proportion to their existing holdings, the same shall be offered to the Members, or some of them, in such proportions or in such manner as may be determined by lots drawn in regard thereto, and the lots shall be drawn in such manner as the Directors may think fit.

- (d) Any Member may, not later than eight days after the date of the offer notice, serve on the Company a notice in writing requesting that the Auditor for the time being of the Company (or at the discretion of the Auditor, a person nominated by the President for the time being of the Institute of Chartered Accountants in the Country of the situation of its Registered Office) certify in writing the sum which in his opinion represents the fair value of the shares comprised in the transfer notice as at the date of the transfer notice and for the purpose of this Article, reference to the Auditor shall include any person so nominated. Upon receipt of such notice, the Company shall instruct the Auditor to certify as aforesaid and the costs of such valuation shall be apportioned among the proposing transferor and the purchasing Members or borne by any one or more of them as the Auditor in his absolute discretion shall decide. In certifying the fair value as aforesaid, the Auditor shall be considered to be acting as an expert and not as an arbitrator or arbiter and accordingly any provisions of law or statute relating to arbitration shall not apply. Upon receipt of the certificate of the Auditor, the Company shall by notice in writing inform all Members of the fair value of each share and of the price per share (being the lower of the price specified in the transfer notice and the fair value of each share) at which the shares comprised in the transfer notice are offered for sale. For the purpose of this Article, the fair value of each share comprised in the transfer notice shall be its value as a rateable proportion of the total value of all the issued shares of the Company and shall not be discounted or enhanced by reference to the number of shares referred to in the transfer notice.
- (e) If purchasing Members shall be found for all the shares comprised in the transfer notice within the appropriate period specified in paragraph (d) above, the Company shall not later than seven days after the expiry of such appropriate period give notice in writing (hereinafter called "the sale notice") to the proposing transferor specifying the purchasing Members and the proposing transferor shall be bound upon payment of the price due in respect of all the shares comprised in the transfer notice to transfer the shares to the purchasing Members.
- (f) If in any case the proposing transferor after having become bound as aforesaid makes a default in transferring any shares, the Company may receive the purchase money on his behalf, and may authorise some person to execute a transfer of such shares in favour of the purchasing Member. The receipt of the Company for the purchase money shall be a good

discharge to the purchasing Member. The Company shall pay the purchase money into a separate bank account.

- (g) If the Company shall not give a sale notice to the proposing transferor within the time specified in paragraph (c) above, he shall, during the period of thirty days next following the expiry of the time so specified, be at liberty to transfer all or any of the shares comprised in the transfer notice to any person or persons at a price not lower than that specified in the transfer notice.
- (h) In the event that Uberior Trading Limited or any company which is its holding company or subsidiary or is a subsidiary of its holding company proposes to sell any shares registered in its name (in this article 9(h) being referred to as 'Uberior') to a *bona fide* third party (who is not a Member) Uberior shall give notice of such proposed sale (containing details of the number of shares, the price per share and the identity of the proposed purchaser, such notice referred to as an 'Uberior Notice') to the Company who shall promptly circulate such notice to every Member. The Members or any of them shall be entitled, within the period of 21 days following the date of the Uberior Notice to serve a notice on Uberior containing an offer, on behalf of the Members or any other person, to purchase all of the shares comprised in the Uberior Notice and at the price specified therein. For the avoidance of doubt the Members shall only be entitled to serve one notice containing such an offer and no notices following the first such notice received shall be valid. Such offer shall be deemed to have been accepted by Uberior once the notice has been served upon it. If Uberior receives no such notice from the Members or any Member within 21 days following the date of the Uberior Notice, Uberior shall, during the period of three months following the expiry of the time so specified, be at liberty to transfer all of the shares comprised in the Uberior Notice (but not some of them) to the purchaser and at a price no lower than that specified in the Uberior Notice.

GENERAL OFFER

- 10. (a) In this Article 10 the following words and expressions shall have the following meanings:
 - (i) "Change of Control" means control (having the meaning given to it in relation to a body corporate by section 840 of the Income and Corporation Taxes Act 1988) of the Company passing to any person (together with any persons acting in concert therewith), not a Member at the date of adoption of these Articles of Association; and
 - (ii) "General Offer" means a general offer made in accordance with this Article 10 by a person whose proposed acquisition of shares shall result in a Change of Control.
- (b) Other than a transfer of shares by Uberior Trading Limited or any company which is its holding company or subsidiary or is a subsidiary of its holding

company, no sale or transfer of, or transfer of any interest in, any shares in the capital of the Company conferring a right to vote at general meetings of the Company which would result, if made and, if appropriate, registered, in a Change of Control, shall be made or registered and no right to subscribe for any such shares which would result, when such shares are issued, in a Change of Control shall be exercised unless:

(i) a General Offer is made:

(aa) to all Members to purchase all the shares then in issue (other than shares which are already registered in the name of the offeror), and

(bb) all other persons holding rights to subscribe for or be issued shares in the capital of the Company; and

(ii) the General Offer, in respect of each share (or right to subscribe for a share) in the Company's share capital is in cash or is accompanied by a cash alternative equal to the greater of:

(aa) the nominal value of such share; and

(bb) the highest price paid or agreed to be paid by the offeror for shares in that class during the period when the General Offer remains open for acceptance or within 12 months prior to its commencement,

and in each case, in respect of a right to subscribe for or be issued a share, less any amounts yet to be paid or to be deemed to be paid by the holder of that right in respect of its exercise.

It shall be a term of a General Offer and of any agreement to acquire any shares or rights for shares pursuant thereto that the acquisition of shares giving rise to the Change of Control is only made if such General Offer becomes or is declared wholly unconditional in respect of each class of shares. Any General Offer shall be made in writing and shall be stipulated to be open for acceptance for at least twenty-eight days. Such a General Offer shall be accepted or rejected in writing within the time period stipulated and shall be deemed to have been rejected by a Member if he does not respond within such time period.

(c) Any transfer of shares which is made pursuant to an acceptance of any General Offer which becomes or is declared wholly unconditional in respect of each class of shares shall not be subject to the restrictions on transfer contained in Article 9.

DIRECTORS

11. Unless and until otherwise determined by Ordinary Resolution the number of Directors shall not exceed ten and shall not be less than two and Clause 64 of Table A shall be modified accordingly.
12. A Director shall not be required to hold any share in the share capital of the Company.
13. The Directors, without prejudice to the general powers, may in the name and on behalf of the Company and from time to time at their discretion borrow from themselves or from others any sum or sums of money for the purposes of the Company, without limit as to amount, and that upon such terms and in such manner as they think fit.
14. A Director may hold any other office or place of profit under the Company except that of Auditor, upon such terms as to remuneration and otherwise as may be determined by the Board.
15. A Director shall be capable of contracting and participating in the profits of any contract or arrangement with the Company in the same manner as if he were not a Director, provided that before the contract or arrangement is entered into or so soon thereafter as he becomes interested therein, he shall disclose to the Board his interest therein in manner required by section 317 of the Companies Act 1985. For the purpose of this Article, a general notice given to the Directors of the Company by a Director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be sufficient declaration of interest in relation to any contract so made. No Director shall be disqualified from voting as a Director in respect of any such contract or arrangement or any matter arising thereout.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

16. A Director shall cease to be a Director of the Company if being a salaried Director he ceases to be employed by the Company for whatever reasons.

DIRECTORS NOT TO RETIRE BY ROTATION

17. The Directors shall not be subject to retirement by rotation. Accordingly, the words "and may also determine the rotation in which any additional directors are to retire" in Clause 78 of Table A shall be held to be delete.

PROCEEDINGS AT GENERAL MEETINGS

18. A Director may vote at any Meeting of Directors, on any Resolution notwithstanding that the Resolution in any manner of way concerns or relates to a matter in which whether directly or indirectly he has any kind of interest and his vote on any such Resolution shall be counted and in respect of any

such Resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the Meeting.

INDEMNITY

19. Subject to the provisions of the Act, every Director, Auditor, Secretary or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties in relation thereto. Regulation 118 of Table shall be extended accordingly.

OVERRIDING PROVISION

20. In the event that any person alone or jointly with any other person, (hereinafter called "the Parent") shall be the holder of not less than 90 per cent in nominal value of the issued shares of the Company as confers the right for the time being to attend and vote at general meetings of the Company, the following provisions (but without prejudice to the provisions of Sections 303 and 304 of the Act) shall apply and to the extent of any inconsistency shall have overriding effect as against all other provisions of these Articles:

- (a) the Parent may at any time and from time to time appoint any person to be a Director or remove from office any Director howsoever appointed;
- (b) any or all powers of the Directors shall be restricted in such respects and to such extent as the Parent may by notice to the Company from time to time prescribe and any such restriction may be removed or varied in such regard and to such extent as the Parent may by notice to the Company from time to time prescribe.

Any such appointment, removal, consent or notice shall be in writing served on the Company and signed by the Parent or in the case of a company on its behalf by any one of its directors or by its secretary or by some other person duly authorised for the purpose. No person dealing with the Company shall be concerned to see or enquire as to whether the powers of the Directors have been in any way restricted hereunder or as to whether any requisite consent of the Parent has been obtained and no obligation incurred or security given or transaction effected by the Company to or with any third party shall be invalid or ineffectual unless the third party had at the time express notice that the incurring of such obligation or the giving of such security or the effecting of such transaction was in excess of the powers of the Directors.